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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0590; Directorate Identifier 2008–NM–057–AD; Amendment 39–15765; AD 2008–25–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. This AD requires repetitive inspections for cracks or fractures of the forward end attachment and the forward lower flange of the flap tracks of the trailing edge flaps, and corrective actions if necessary. For certain airplanes, this AD would also require modifying the fail-safe links of the main carriage. This AD results from a detailed structural analysis of the flap attach structural and fail-safe components, accomplished as a result of a dynamic stability and control analysis, which could not demonstrate continued safe flight and landing of the airplane after the loss of a trailing edge flap. We are issuing this AD to detect and correct cracks or fractures of the primary structural and fail-safe load paths of the inboard and outboard trailing edge flaps, which could result in the loss of a flap during takeoff or landing, reducing flightcrew ability to maintain the safe flight and landing of the airplane.

DATES: This AD is effective January 15, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 15, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. That NPRM was published in the **Federal Register** on May 23, 2008 (73 FR 30003) That NPRM proposed to require repetitive inspections for cracks or fractures of the forward end attachment and the forward lower flange of the flap tracks of the trailing edge flaps, and corrective actions if necessary. For certain airplanes, that NPRM would also require modifying the fail-safe links of the main carriage.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the commenters.

Support for the NPRM

Boeing has reviewed the NPRM and concurs with the content of the proposed rule.

Request To Extend Certain Compliance Times

Northwest Airlines (NWA) asks that the repetitive inspection intervals for the Part 1 inspections, as required by paragraph (f) of the NPRM, be changed to specify intervals not to exceed 750 flight cycles after accomplishing the last inspection or within 750 flight cycles after the flap track overhaul, whichever occurs later. For Part 3 inspections, NWA asks that the repetitive inspection interval be changed to intervals not to exceed 1,500 flight cycles after accomplishing the last inspection or within 1,500 flight cycles after flap track overhaul, whichever occurs later. NWA adds that the reason for the request is that, as part of its procedure for removing the track for overhaul, the attaching fuse pin is removed and inspected and the defined support fitting is inspected for condition; any failure of the track would be detected during the track overhaul.

We do not agree with NWA's request to change the repetitive inspection interval. The structural analysis of the flap attach structural and fail-safe components supports the compliance time specified for the repetitive inspection interval. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required inspections within a period of time that corresponds to the normal scheduled maintenance for most affected operators. These maintenance schedules can vary greatly from operator to operator. In light of these items, we have determined that the repetitive inspection intervals specified in the service bulletin are appropriate. However, according to the provisions of paragraph (j) of this AD, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level

of safety. We have not changed the AD in this regard.

NWA also asks that the FAA review the 750-flight-cycle repetitive inspection interval requirement, and if supported by new analysis, change it to 1,000 flight cycles. NWA states that a 1,000-flight-cycle interval would permit accomplishing the inspections in conjunction with scheduled airplane maintenance.

We do not agree with the request to change the interval for the repetitive inspections to 1,000 flight cycles. Previous analysis supports the current 750-flight-cycle interval, and no new analysis is currently available. However, as noted in the response to the previous comment, we will consider requests for approval of an AMOC if sufficient data are submitted that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 190 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Part 1 Inspections	4	$80	$0	$320 per inspection cycle.	190	$60,800 per inspection cycle.
Part 3 Inspections	4	80	$0	$320 per inspection cycle.	190	$60,800 per inspection cycle.
Part 2 Modification for Groups 1–3 Airplanes.	Between 3 and 7	80	Between $212 and $7,934.	Between $452 and $8,494.	182	Between $82,264 and $1,545,908.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–07 Boeing: Amendment 39–15765. Docket No. FAA–2008–0590; Directorate Identifier 2008–NM–057–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a detailed structural analysis of the flap attach structural and fail-safe components accomplished as a result of a dynamic stability and control analysis, which could not demonstrate continued safe flight and landing of the airplane after the loss of a trailing edge flap. We are issuing this AD to detect and correct cracks or fractures of the primary structural and fail-safe load paths of the inboard and outboard trailing edge flaps, which could result in the loss of a flap during takeoff or landing, reducing flightcrew ability to maintain the safe flight and landing of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Repetitive Inspections/Corrective Actions

(f) For all airplanes: Except as provided by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008, inspect for cracks or fractures of the forward end attachment and the forward lower flange of the flap tracks of the trailing edge flaps, and do all applicable corrective actions, by doing all the actions specified in Parts 1 and 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2323, dated

February 21, 2008, except as provided by paragraph (i) of this AD. Do all applicable corrective actions before further flight. Repeat the applicable inspection at the applicable time specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008.

Modification of Fail Safe Links of Main Carriage

(g) For Groups 1, 2, and 3 airplanes: Within 24 months after the effective date of this AD, replace the fail-safe links, pins, and attachment hardware in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008.

Exception to Compliance Times

(h) Where Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008, specifies counting the compliance time from ''* * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

Exception to Corrective Actions

(i) If any fractured support fitting is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 747–57A2323, dated February 21, 2008; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 28, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29073 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27739; Directorate Identifier 2006–NM–250–AD; Amendment 39–15760; AD 2008–25–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes; and Model A340–200 and –300 Airplanes

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

ACTION: Final rule.

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

* * * * *

The aim of * * * [Special Federal Aviation Regulation (SFAR) 88] is to require all holders of type certificates * * * to carry out a definition review against explosion hazards.

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

DATES: This AD becomes effective January 15, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 15, 2009.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on June 17, 2008 (73 FR 34228). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA (Joint Aviation Authorities) recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require all holders of type certificates for passenger transport aircraft certified after January 1st, 1958 with a capacity of 30 passengers or more, or a payload of 3,402 kg or more, to carry out a definition review against explosion hazards.

Consequently, the following measures [are] rendered mandatory * * *:

- [inspection and] replacement [if necessary] of the white P-clips by blue P-clips which are more fuel resistant remove the risks of fuel quantity indicator (FQI) and fuel level sensor system (FLSS) harnesses chafing against the metallic part of the P-clip,
- Modification of electrical bonding of equipment installed in fuel tanks in order to re-establish the conformity with the design definition by introducing additional bonding leads, electrical bonding points and electrical bonding of a support bracket for a diffuser assembly installed between Rib 1 and Rib 2 on the stringers of the Number 1 bottom skin panel,

• Modification of bonding points, installation of additional bonding leads and other modifications of the Additional Center Tank (ACT),

• Modification to increase the distance between metallic parts on the THS Trim Tank,

• Installation of a bonding lead between the bonding tags on the Jettison valve actuator and drive assembly.

This new AD supersedes EASA AD 2006–0322, taking over its requirements and:

• Mandates SB [service bulletin] A330–28–3082 Revision 04 which introduces an additional work for some bonding points which were omitted from the center tank at original issue (action n°2 [paragraph (f)(2) of this AD]);

• Mandates SB A340–28–4097 Revision 03 which introduces an additional work by addition of electrical bondings omitted from previous revisions (action n°2);

• Introduces an extension of the required compliance time to perform action n°4 for those aircraft already compliant with AIRBUS AOT 55–03 dated 22 August 1996 (''solution A''), mandated by DGAC [Direction Générale de l'Aviation Civile] AD F–1996–178–049(B) R1 and DGAC AD F–1996–177–038(B) with a compliance time of November 15th, 1996;

• Refers to the latest revision of certain AIRBUS SBs.

The unsafe condition is 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. You may obtain further information by examining the MCAI in the AD docket.

Explanation of New Service Information

Airbus has issued Mandatory Service Bulletin A330–28–3082, Revision 05, including Appendix 1, dated May 27, 2008. We referred to Revision 04 of that service bulletin, dated August 3, 2007, as the appropriate source of service information for accomplishing certain actions specified in the supplemental NPRM. Revision 05 of the service bulletin was issued to delete information relating to the bonding of a bracket at Stringer 14 between Rib 1 and Rib 2, which is not applicable to the Model A330 airplanes affected by that service bulletin. Revision 05 also includes additional kits and other minor editorial changes. No additional work is required for airplanes modified in accordance with Revision 04.

We have changed Table 1 of this AD to include a reference to Revision 05, in addition to Revision 04, of Airbus Mandatory Service Bulletin A330–28–3082 for defining the applicability of certain paragraphs. We have also changed paragraphs (f)(2)(i) and (f)(2)(iii) of this AD to specify Revision 05 of the service bulletin as the appropriate source of service information for doing the actions in those paragraphs, and we have changed Table 2 of this AD to list Revision 04 of the service bulletin as acceptable for accomplishment of the actions before the effective date of this AD. Finally, we have changed Table 3 of this AD to include Revision 05 of the service bulletin in the list of related service information.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 28 products of U.S. registry. We also estimate that it will take about 670 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $2,718 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,576,904, or $56,318 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–02 Airbus: Amendment 39–15760. Docket No. FAA–2007–27739; Directorate Identifier 2006–NM–250–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330, A340–200, and A340–300 airplanes, all certified models, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Codes 28: Fuel, and 55: Stabilizers.

Reason

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

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003, the JAA (Joint Aviation Authorities) recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require all holders of type certificates for passenger transport aircraft certified after January 1st, 1958 with a capacity of 30 passengers or more, or a payload of 3,402 kg or more, to carry out a definition review against explosion hazards.

Consequently, the following measures [are] rendered mandatory * * *:

• [inspection and] replacement [if necessary] of the white P-clips by blue P-clips which are more fuel resistant remove the risks of fuel quantity indicator (FQI) and fuel level sensor system (FLSS) harnesses chafing against the metallic part of the P-clip,

• Modification of electrical bonding of equipment installed in fuel tanks in order to re-establish the conformity with the design definition by introducing additional bonding leads, electrical bonding points and electrical bonding of a support bracket for a diffuser assembly installed between Rib 1 and Rib 2 on the stringers of the Number 1 bottom skin panel,

• Modification of bonding points, installation of additional bonding leads and other modifications of the Additional Center Tank (ACT),

• Modification to increase the distance between metallic parts on the THS (trimmable horizontal stabilizer) Trim Tank,

• Installation of a bonding lead between the bonding tags on the Jettison valve actuator and drive assembly.

This new AD supersedes EASA AD 2006–0322, taking over its requirements and:

• Mandates SB [service bulletin] A330–28–3082 Revision 04 which introduces an additional work for some bonding points which were omitted from the center tank at original issue (action n°2 [paragraph (f)(2) of this AD]);

• Mandates SB A340–28–4097 Revision 03 which introduces an additional work by addition of electrical bondings omitted from previous revisions (action n°2);

• Introduces an extension of the required compliance time to perform action n°4 for those aircraft already compliant with AIRBUS AOT 55–03 dated 22 August 1996 (''solution A''), mandated by DGAC [Direction Générale de l'Aviation Civile] AD F–1996–178–049(B) R1 and DGAC AD F–1996–177–038(B) with a compliance time of November 15th, 1996;

• Refers to the latest revision of certain AIRBUS SBs.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions and Compliance

(f) Unless already done, do the actions in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD for the applicable airplanes identified in Table 1 of this AD.

TABLE 1—APPLICABLE PARAGRAPHS BY MODEL

These airplane models—	Except airplanes—	Are affected by these paragraphs of this AD—
Model A330, A340–200, and A340–330 airplanes.	On which Airbus Modification 47634 has been embodied in production.	(f)(1).
	• On which both Airbus Modifications 49135 and 49630 have been embodied in production. • Both Airbus Modifications 51825 and 55118 have been embodied in production. • That have been modified in-service in accordance with both Airbus Mandatory Service Bulletin A330–28–3082, Revision 04, including Appendix 01, dated August 3, 2007, or Revision 05, including Appendix 1, dated May 27, 2008; and Airbus Mandatory Service Bulletin A330–28–3101, Revision 01, dated October 11, 2006. • That have been modified in-service in accordance with both Airbus Mandatory Service Bulletin A340–28–4097, Revision 03, including Appendix 01, dated July 3, 2007; and Airbus Mandatory Service Bulletin A340–28–4118, Revision 02, dated July 10, 2007.	(f)(2)(i), except as provided by paragraphs (f)(2)(ii) and (f)(2)(iii) of this AD.

TABLE 1—APPLICABLE PARAGRAPHS BY MODEL—Continued

These airplane models—	Except airplanes—	Are affected by these paragraphs of this AD—
Model A330 airplanes on which the actions specified in Airbus Service Bulletin A330–28–3082, dated June 14, 2004, have been accomplished before the effective date of this AD; and Model A340–200 and A340–300 airplanes on which the actions specified in Airbus Service Bulletin A340–28–4097, dated June 14, 2004, Revision 01, dated March 3, 2005, or Airbus Mandatory Service Bulletin A340–28–4097, Revision 02, dated August 16, 2006, have been accomplished before the effective date of this AD.	• On which both Airbus Modifications 49135 and 49630 have been embodied in production. • Both Airbus Modifications 51825 and 55118 have been embodied in production. • That have been modified in-service in accordance with both Airbus Mandatory Service Bulletin A330–28–3082, Revision 04, including Appendix 01, dated August 3, 2007, or Revision 05, including Appendix 1, dated May 27, 2008; and Airbus Mandatory Service Bulletin A330–28–3101, Revision 01, dated October 11, 2006. • That have been modified in-service in accordance with both Airbus Mandatory Service Bulletin A340–28–4097, Revision 03, including Appendix 01, dated July 3, 2007, and Airbus Mandatory Service Bulletin A340–28–4118, Revision 02, dated July 10, 2007.	(f)(2)(ii) and (f)(2)(iii).
Model A340–200 and A340–300 airplanes that have the ACT embodied in production or in service (Airbus Modification 42612, 44002, or 44005).	That have been modified in service by Airbus Mandatory Service Bulletin A340–28–4078, Revision 01, dated January 25, 2007.	(f)(3).
Model A340–200 and A340–300 airplanes	• On which Airbus Modification 44252 has been embodied in production. • That have been modified in-service in accordance with Airbus Service Bulletin A340–55–4017, dated August 20, 1996; Revision 1, dated February 12, 2007; or Revision 02, dated March 16, 2007.	(f)(4)(i), except as provided by paragraph (f)(4)(ii) of this AD.
Model A330–301, –321, –322, –341, –342 airplanes.	• On which Airbus Modification 44252 has been embodied in production. • That have been modified in-service in accordance with Airbus Service Bulletin A330–55–3016, dated August 20, 1996; Revision 1 dated February 12, 1997; or Revision 02, dated March 16, 2007.	(f)(4)(i), except as provided by paragraph (f)(4)(ii) of this AD.
Model A330–301, –321, –322, –341, –342 airplanes; and Model A340–200 and A340–300 airplanes.	On which the improvement of the THS lightning strike protection has already been performed before the effective date of this AD in accordance with Airbus A330/A340 All Operators Telex 55–03, dated August 22, 1996 (“solution A”), mandated by Direction Générale de l’Aviation Civile (DGAC) Airworthiness Directive F–1996–178–049(B) R1, and DGAC Airworthiness Directive F–1996–177–038(B), with a compliance time of November 15, 1996.	(f)(4)(ii).
Model A340–200 and A340–300 airplanes	• On which Airbus Modification 46142 has been embodied in production. • That have been modified in-service in accordance with Airbus Mandatory Service Bulletin A340–28–4073, Revision 02, dated March 8, 2007.	(f)(5).

(1) Within 24 months after the effective date of this AD, do a detailed visual inspection of the P-clips in the wings and center fuel tanks, and apply the applicable corrective actions, in accordance with the applicable instructions of Airbus Mandatory Service Bulletin A330–28–3092, Revision 01, dated December 14, 2005; or Airbus Mandatory Service Bulletin A340–28–4107, Revision 01, dated December 14, 2005.

(2) Do the requirements of paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD, as applicable, at the times specified in those paragraphs.

(i) For airplanes affected by this paragraph, as specified in Table 1 of this AD: Within 24 months after the effective date of this AD, modify the electrical bonding of the equipment installed in fuel tanks, in accordance with both Airbus Mandatory Service Bulletin A330–28–3082, Revision 05, including Appendix 1, dated May 27, 2008, and Airbus Mandatory Service Bulletin A330–28–3101, Revision 01, dated October 11, 2006; or both Airbus Mandatory Service Bulletin A340–28–4097, Revision 03, including Appendix 01, dated July 3, 2007, and Airbus Mandatory Service Bulletin A340–28–4118, Revision 02, dated July 10, 2007; as applicable.

(ii) For airplanes affected by this paragraph, as specified in Table 1 of this AD: Within 24 months after the effective date of this AD, modify the electrical bonding of the equipment installed in fuel tanks, in accordance with Airbus Mandatory Service Bulletin A330–28–3101, Revision 01, dated October 11, 2006; or Airbus Mandatory Service Bulletin A340–28–4118, Revision 02, dated July 10, 2007; as applicable.

(iii) For airplanes affected by this paragraph, as specified in Table 1 of this AD:

Within 48 months after the effective date of this AD, do the additional work specified in Airbus Mandatory Service Bulletin A330–28–3082, Revision 05, including Appendix 1, dated May 27, 2008; or Airbus Mandatory Service Bulletin A340–28–4097, Revision 03, including Appendix 01, dated July 3, 2007; in accordance with the accomplishment instructions of those service bulletins, as applicable.

(3) Within 24 months after the effective date of this AD, modify the electrical bonding in the ACT in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–28–4078, Revision 01, dated January 25, 2007.

(4) Within 24 months after the effective date of this AD, do the requirements of paragraphs (f)(4)(i) and (f)(4)(ii), as applicable.

(i) For airplanes affected by this paragraph, as specified in Table 1 of this AD: Within 24 months after the effective date of this AD, increase the distance between metallic parts on the THS trim tank in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3016, Revision 02, March 16, 2007; or Airbus Mandatory Service Bulletin A340–55–4017, Revision 02, dated March 16, 2007; as applicable.

(ii) For airplanes affected by this paragraph, as specified in Table 1 of this AD: At the first THS removal from the aircraft done for any reason after the effective date of this AD (e.g., fuselage stress jacking, and repair) when the airplane is on a support tool (lifting and resting point fittings must be installed), or at the time of the first maintenance task that requires the use of THS lifting and resting point fittings, whichever occurs earlier, increase the distance between metallic parts on the THS trim tank in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3016, Revision 02, March 16, 2007; or Airbus Mandatory Service Bulletin A340–55–4017, Revision 02, dated March 16, 2007; as applicable.

(5) Within 24 months after the effective date of this AD, install a bonding lead between the bonding tags on the jettison valve actuator and drive assembly in accordance with the instructions of Airbus Mandatory Service Bulletin A340–28–4073, Revision 02, dated March 8, 2007.

(6) Actions done before the effective date of this AD in accordance with the service bulletins listed in Table 2 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 2—CREDIT SERVICE BULLETINS

Airbus Service information	Revision level	Date	Corresponding paragraphs
Mandatory Service Bulletin A330–28–3082	02	August 11, 2006	(f)(2)(i) of this AD.
Mandatory Service Bulletin A330–28–3082	03	November 15, 2006	(f)(2)(i) and (f)(2)(iii) of this AD.
Mandatory Service Bulletin A330–28–3082	04	August 3, 2007	(f)(2)(i) and (f)(2)(iii) of this AD.
Mandatory Service Bulletin A330–28–3101	Original	June 5, 2006	(f)(2)(i) and (f)(2)(ii) of this AD.
Mandatory Service Bulletin A340–28–4118	Original	June 5, 2006	(f)(2)(i) and (f)(2)(ii) of this AD.
Mandatory Service Bulletin A340–28–4118	01	October 11, 2006	(f)(2)(i) and (f)(2)(ii) of this AD.
Service Bulletin A330–28–3082	01	March 2, 2005	(f)(2)(i) of this AD.
Service Bulletin A330–55–3016	Original	August 20, 1996	(f)(4)(i) and (f)(4)(ii) of this AD.
Service Bulletin A330–55–3016	1	February 12, 1997	(f)(4)(i) and (f)(4)(ii) of this AD.
Service Bulletin A340–28–4073	Original	May 14, 1998	(f)(5) of this AD.
Service Bulletin A340–28–4073	01	October 9, 1998	(f)(5) of this AD.
Service Bulletin A340–28–4078	Original	March 17, 2000	(f)(3) of this AD.
Service Bulletin A340–55–4017	Original	August 20, 1996	(f)(4)(i) and (f)(4)(ii) of this AD.
Service Bulletin A340–55–4017	1	February 12, 1997	(f)(4)(i) and (f)(4)(ii) 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, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, ANM–116, International Branch, Transport Airplane Directorate, FAA, 1601 Lind Ave. SW., Renton, Washington, 98057–3356, telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0278, dated November 5, 2007 [Corrected: November 8, 2007], and the service bulletins in Table 3 of this AD, for related information.

TABLE 3—RELATED SERVICE BULLETINS

Airbus Mandatory Service Bulletin	Revision level	Date
A330–28–3082, including Appendix 1	05	May 27, 2008.
A330–28–3092, excluding Appendix 01	01	December 14, 2005.
A330–28–3101	01	October 11, 2006.
A330–55–3016	02	March 16, 2007.
A340–28–4073	02	March 8, 2007.
A340–28–4078	01	January 25, 2007.
A340–28–4097, including Appendix 01	03	July 3, 2007.
A340–28–4107, excluding Appendix 01	01	December 14, 2005.
A340–28–4118	02	July 10, 2007.
A340–55–4017	02	March 16, 2007.

Material Incorporated by Reference

(i) You must use the service information specified in Table 4 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 4—MATERIAL INCORPORATED BY REFERENCE

Airbus Mandatory Service Bulletin	Revision level	Date
A330–28–3082, including Appendix 1	05	May 27, 2008.
A330–28–3092, excluding Appendix 01	01	December 14, 2005.
A330–28–3101	01	October 11, 2006.
A330–55–3016	02	March 16, 2007.
A340–28–4073	02	March 8, 2007.
A340–28–4078	01	January 25, 2007.
A340–28–4097, including Appendix 01	03	July 3, 2007.
A340–28–4107, excluding Appendix 01	01	December 14, 2005.
A340–28–4118	02	July 10, 2007.
A340–55–4017	02	March 16, 2007.

Issued in Renton, Washington, on November 26, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29076 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1007; Directorate Identifier 2008–NM–135–AD; Amendment 39–15761; AD 2008–25–03]

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), Department of Transportation (DOT).

ACTION: Final rule.

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards. * * *

The assessment showed that due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.

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

DATES: This AD becomes effective January 15, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 15, 2009.

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

FOR FURTHER INFORMATION CONTACT: 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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 23, 2008 (73 FR 54749). That NPRM proposed 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 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 due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.

To correct the unsafe condition, this directive mandates the installation of conduit and the addition of spacers to protect fuel tank wiring.

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

Comments

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

on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 159 products of U.S. registry. We also estimate that it will take about 38 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $2,914 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $946,686, or $5,954 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–03 Bombardier, Inc. (Formerly Canadair): Amendment 39–15761. Docket No. FAA–2008–1007; Directorate Identifier 2008–NM–135–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 15, 2009.

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 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 due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.

To correct the unsafe condition, this directive mandates the installation of conduit and the addition of spacers to protect fuel tank wiring.

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 fuel system wiring along the fuselage and in the avionics compartment by installing protective conduit and spacers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005.

(2) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–24–011, dated September 7, 2004; Revision A, dated December 14, 2004; or Revision B, dated February 28, 2005; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 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–2008–25, dated July 3, 2008; and Bombardier Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 26, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29077 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0175; Directorate Identifier 2007–NM–184–AD; Amendment 39–15766; AD 2008–25–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This AD requires changing the wiring of the fuel boost pump and doing other specified actions. This AD results from reports of short circuits in an electrical connector at the wing-to-body electrical disconnect panel. We are issuing this AD to prevent a short circuit of the electrical connector for the fuel boost pump, which could cause the instruments for fuel, flap, slat, and aileron systems to malfunction and create a potential ignition source inside the fuel tanks. A potential ignition source inside the fuel tank in combination with flammable fuel vapors could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective January 15, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 15, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757 airplanes. That NPRM was published in the **Federal Register** on November 9, 2007 (72 FR 63512). That NPRM proposed to require changing the wiring of the fuel boost pump and doing other specified actions.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Incorporate Revised Service Information

Boeing asks that we refer to Boeing Special Attention Service Bulletins 757–28–0095 and 757–28–0096, both Revision 1, both dated June 4, 2008, in the final rule. Boeing Special Attention Service Bulletins 757–28–0095 and 757–28–0096, both dated June 18, 2007, were referred to in the NPRM as the appropriate sources of service information for accomplishing the actions specified.

We have reviewed Revision 1 of these referenced service bulletins and we agree with the commenter since no additional work is necessary on airplanes changed in accordance with the original issue of the referenced service information. Revision 1 of these service bulletins clarifies certain procedures and certain routing and splice locations. We have added Revision 1 of these service bulletins to the applicability specified in paragraphs (c)(1) and (c)(2) of this AD, and to paragraph (f) of this AD, as the appropriate sources of service

information for accomplishing the actions specified. In addition, we have added credit to paragraph (f) for previously accomplishing the actions using the original issue of the service bulletins.

Request To Change Airplane Manufacturer's Name

Boeing asks that the airplane manufacturer's name specified in the product identification section of the regulatory text of the NPRM be changed from ''Airbus'' to ''Boeing.''

We agree that the airplane manufacturer's name should be changed, as this was an inadvertent error in the NPRM; we have changed the name in that paragraph of the AD accordingly.

Request To Allow Alternate Routing of Wiring

Continental Airlines (CAL) refers to Figure 2 of Boeing Special Attention Service Bulletin 757–28–0095, dated June 18, 2007, and states that it would be easier and more appropriate when doing the wire modification to utilize one of the open holes in the panel instead of splicing the wires for this location. CAL adds that the splice locations for the left-hand aft and right-hand aft boost pumps, as shown in Boeing Special Attention Service Bulletins 757–28–0095 and 757–28–0096, both dated June 18, 2007, are incorrect and the splices cannot be accomplished in those areas. CAL recommends that these service bulletins be revised with the proper alternative rework instructions for the subject discrepancies.

We have reviewed the referenced service information and we do not agree that the splices cannot be accomplished in the locations referred to in the comment. In addition, we have determined that clarification of certain routing and splice locations is helpful, and that clarification is provided in Revision 1 of the referenced service bulletins, as noted previously. We infer that CAL is also asking us to allow alternative routing of the wiring to that specified in the referenced service bulletins. Under the provisions of paragraph (g) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the alternative routing of the wiring would provide an acceptable level of safety. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are 1,697 airplanes of the affected design in the worldwide fleet. This AD affects about 673 airplanes of U.S. registry. The required actions take up to 12 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is up to $646,080, or up to $960 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–08 Boeing: Amendment 39–15766. Docket No. FAA–2007–0175; Directorate Identifier 2007–NM–184–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 15, 2009.

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) Boeing Model 757–200, –200PF, and –200CB series airplanes, as identified in Boeing Special Attention Service Bulletin 757–28–0095, Revision 1, dated June 4, 2008.

(2) Boeing Model 757–300 series airplanes, as identified in Boeing Special Attention Service Bulletin 757–28–0096, Revision 1, dated June 4, 2008.

Unsafe Condition

(d) This AD results from reports of short circuits in an electrical connector at the wing-to-body electrical disconnect panel. We are issuing this AD to prevent a short circuit of the electrical connector for the fuel boost pump, which could cause the instruments for the fuel, flap, slat, and aileron systems to malfunction and create a potential ignition source inside the fuel tank. A potential ignition source inside the fuel tank in combination with flammable fuel vapors could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Fuel Boost Pump Wiring Change

(f) Within 60 months after the effective date of this AD, change the wiring of the fuel boost pump and do all other specified actions as applicable, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–28–

0095 (for Model 757–200, –200PF, and –200CB series airplanes) or 757–28–0096 (for Model 757–300 series airplanes), both Revision 1, both dated June 4, 2008; as applicable. The other specified actions must be done before further flight after changing the fuel boost pump wiring. Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–28–0095 or 757–28–0096, both dated June 18, 2007, are considered acceptable for compliance with the corresponding actions in this paragraph.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 757–28–0095, Revision 1, dated June 4, 2008; or Boeing Special Attention Service Bulletin 757–28–0096, Revision 1, dated June 4, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 28, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29079 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1274; Directorate Identifier 2008–NM–197–AD; Amendment 39–15764; AD 2008–25–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes Equipped With International Aero Engines (IAE) Model V2500–A1 Engines or Model V25xx–A5 Series Engines

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

ACTION: Final rule; request for comments.

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

* * * Airbus has advised that an incorrect part number has been introduced in the IPC (illustrated parts catalog) * * * for the rear engine mount barrel nut. This problem affects Airbus A319, A320 and A321 models with IAE (International Aero Engine) V2500–A5 engines.

The part number introduced in error is not certificated for the IAE V2500–A5 engine installation and, if installed, may fail in service.

* * * * *

Failure of the rear engine mount barrel nut could result in reduced structural integrity of the rear engine mount and possible separation of the engine from the airplane, and a consequent hazard to the airplane and persons and property on the ground. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 26, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 26, 2008.

We must receive comments on this AD by January 12, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2008–0191–E, dated October 20, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

DGAC–France AD 90–079–009(B) R1 [and corresponding FAA AD 90–22–08, amendment 39–6781 (corrected on November 8, 1990, 55 FR 47028)] introduced an inspection and daily rectification action on Airbus A320–231 aircraft in order to prevent failure of one or more of the engine rear mount barrel nuts.

Subsequent to the above problem, Airbus has advised that an incorrect part number has been introduced in the IPC (illustrated parts catalog) (reference 71–22–11 Figure 80B item 180) for the rear engine mount barrel nut. This problem affects Airbus A319, A320 and A321 models with IAE (International Aero Engine) V2500–A5 engines.

The part number introduced in error is not certificated for the IAE V2500–A5 engine installation and, if installed, may fail in service.

This Airworthiness Directive (AD), which supersedes DGAC–France AD 90–079–009(B) R1, mandates the inspections required to determine the standard of barrel nut installed and the corrective actions, as necessary, for the aircraft with V2500–A1 or –A5 engines installed.

Failure of the rear engine mount barrel nut could result in reduced structural integrity of the rear engine mount and possible separation of the engine from the airplane, and a consequent hazard to the airplane and persons and property on the ground. Required actions include inspecting for broken barrel nuts. The corrective actions include replacing the barrel nut with a different barrel nut and replacing the associated bolts, washers, and retainers; and contacting Airbus for corrective action if any affected barrel nut is found broken and doing that corrective action. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operator Telex A320–71A1045, dated October 17, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of this 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the possible failure of the rear engine mount on airplanes equipped with the incorrect barrel nuts, which could result in separation of the engine from the airplane and a consequent hazard to the airplane and persons and property on the ground. These incorrect rear engine mount barrel nuts may have been installed during maintenance on IAE Model V25xx-A5 series engines due to an error in the illustrated parts catalog. These incorrect barrel nuts cannot withstand the engine loads and must be replaced as soon as possible. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1274; Directorate Identifier 2008–NM–197–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–06 Airbus: Amendment 39–15764. Docket No. FAA–2008–1274; Directorate Identifier 2008–NM–197–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 26, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A319–131, A319–132, A319–133, A320–231, A320–232, A320–233, A321–131, A321–231, and A321–232 series airplanes, certificated in any category; all serial numbers equipped with International Aero Engine (IAE) Model V2500–A1 engines or Model V25xx–A5 series engines. (The ''xx'' is used in the series engine reference to indicate various numbers listed in the type certificate data sheet.)

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

DGAC–France AD 90–079–009(B) R1 [and corresponding FAA AD 90–22–08, amendment 39–6781 (corrected on November 8, 1990, 55 FR 47028)] introduced an inspection and daily rectification action on Airbus A320–231 aircraft in order to prevent failure of one or more of the engine rear mount barrel nuts.

Subsequent to the above problem, Airbus has advised that an incorrect part number has been introduced in the IPC (illustrated parts catalog) (reference 71–22–11 Figure 80B item 180) for the rear engine mount barrel nut. This problem affects Airbus A319, A320 and A321 models with IAE V2500–A5 engines.

The part number introduced in error is not certificated for the IAE V2500–A5 engine installation and, if installed, may fail in service.

This Airworthiness Directive (AD) * * * mandates the inspections required to determine the standard of barrel nut installed and the corrective actions, as necessary, for the aircraft with V2500–A1 or –A5 engines installed.

Failure of the rear engine mount barrel nut could result in reduced structural integrity of the rear engine mount and possible separation of the engine from the airplane, and a consequent hazard to the airplane and persons and property on the ground. Required actions include inspecting for broken barrel nuts. The corrective actions include replacing the barrel nut with a different barrel nut and replacing the associated bolts, washers, and retainers; and contacting Airbus for corrective action if any affected barrel nut is found broken and doing that corrective action.

Actions and Compliance

(f) Unless already done, do the following actions for airplanes equipped with IAE model V2500–A1 engines: Within 7 days after the effective date of this AD, conduct a records review to determine if barrel nut part number (P/N) 83644–1612 is installed, in accordance with paragraph 5.1 of Airbus All Operator Telex (AOT) A320–71A1045, dated October 17, 2008.

(1) For airplanes on which it can be positively determined from a records review that P/N 83644–1612 is not installed, no further action is required by this paragraph.

(2) For airplanes on which it cannot be positively determined from a records review that P/N 83644–1612 is not installed: Within 7 days after the effective date of this AD, do the visual inspections of the barrel nut for part numbers and for broken nuts in accordance with paragraph 5.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(i) If one or more barrel nuts are found broken, before further flight contact Airbus for corrective actions and do the corrective actions.

(ii) If two or more barrel nuts having P/N 83644–1612 are found installed, before further flight correct the installation in accordance with paragraph 5.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(iii) If only one barrel nut having P/N 83644–1612 is found installed: At the later of the times specified in paragraphs (f)(1)(iii)(A) and (f)(2)(iii)(B) of this AD, correct the installation in accordance with paragraph 5.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(A) Within 1,200 flight hours or 960 flight cycles since installation of the part, whichever occurs first.

(B) Within 7 days after the effective date of this AD.

(g) Unless already done, do the following actions for airplanes equipped with IAE Model V25xx–A5 series engines: Within 7 days after the effective date of this AD, conduct a records review to determine if barrel nut P/N 83644–1612 is installed, in accordance with paragraph 4.1 of Airbus AOT A320–71A1045, dated October 17, 2008.

(1) For airplanes for which it can be positively determined from a records review that P/N 83644–1612 is not installed, no further action is required by this paragraph.

(2) For airplanes on which it cannot be positively determined that P/N 83644–1612 is not installed: Within 7 days after the effective date of this AD, do the visual inspections of the barrel nut for part numbers and for broken nuts, in accordance with paragraph 4.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(i) If one or more barrel nuts are found broken, before further flight contact Airbus for corrective actions and do the corrective actions.

(ii) If two or more barrel nuts having P/N 83644–1612 are found installed, before further flight correct the installation in accordance with paragraph 4.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(iii) If only one barrel nut having P/N 83644–1612 is found installed: At the later of the time specified in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this AD, correct the installation in accordance with paragraph 4.2 of Airbus AOT A320–71A1045, dated October 17, 2008.

(A) Within 1,200 flight hours or 960 flight cycles since installation of the part, whichever occurs first.

(B) Within 7 days after the effective date of this AD.

(h) As of the effective date of this AD, no person may install an engine mount barrel nut, part number 83644–1612, on any affected airplane.

(i) Accomplishment of the corrective actions specified in paragraph (f) of this AD terminates the requirements of AD 90–22–08, amendment 39–6781.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(k) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2008–0191–E, dated October 20, 2008; and Airbus AOT A320–71A1045, dated October 17, 2008; for related information.

Material Incorporated by Reference

(l) You must use Airbus All Operator Telex A320–71A1045, dated October 17, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information that is incorporated by reference

at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 26, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29182 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0732; Directorate Identifier 2008–NM–053–AD; Amendment 39–15762; AD 2008–25–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

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

ACTION: Final rule.

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

* * * [S]ome aircraft could have experienced wing overpressure consecutive to the latent failure of both [pressure relief] valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. * * *

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

DATES: This AD becomes effective January 15, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 15, 2009.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 10, 2008 (73 FR 39628). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Analysed in-service events revealed that corrosion of pressure relief valves in wing fuel tanks was likely to occur well before reaching their Time Between Overhaul (TBO) and could make the valves stick in the closed position.

Therefore some aircraft could have experienced wing overpressure consecutive to the latent failure of both valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. Consequently this Airworthiness Directive (AD) mandates introduction of a new repetitive inspection of the wing structure.

The repetitive ultrasonic inspection is intended to detect incipient cracking on the stiffeners of the right-hand and left-hand wing lower panels between ribs 13 and 17 (the inspection area extends to just beyond rib 16). The corrective actions if any cracking is found include contacting Dassault for repair instructions, and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request to Change the Inspection Interval for the ''Valve Boxes''

Jim Sparks, a private citizen, requests that a more practical solution to this subject would be to change the interval of inspections for the ''valve boxes.'' He states that the reliability of the ''valve boxes'' has not been stellar. The commenter explains that Model Mystere-Falcon 50 airplanes have two independent wing fuel tank ''valve boxes'' that incorporate over-pressure relief valves coupled with a stand-alone wing tank pressure reducing/overpressure relief valve. The commenter states that because of the commonality in the system, both overpressure relief valves and the regulating valve would have to fail before any overpressure would occur. The commenter also states that the pressure relief valves, along with the entire system, do have manufacturer's recommended intervals for both operational and functional testing and that a more practical solution would be to require a change to the inspection interval for those ''valve boxes.''

We disagree with the request to require a change to the repetitive inspection interval of the ''valve boxes.'' The purpose of this AD is to address the unsafe condition, which is possible damage to the wing structure due to over-pressurization. Therefore, we will be mandating only the inspections of the lower panel stiffeners. We are aware that the manufacturer has made changes to the design of the ''valve boxes'' and the inspection interval for them. We agree with the recommended changes from the manufacturer in modifying the design and inspection interval of the ''valve boxes'' and acknowledge that they could result in fewer overpressure occurrences leading to the unsafe condition of damage to the wing structure. However, the intent of this AD is to detect any cracking of the wing structure that might have a root cause in an overpressure event. We have not changed the AD in this regard.

Explanation of Updated Service Information

Since we issued the NPRM, Dassault has issued Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 17 (ATA 57–00–21),'' dated July 2008. (We referred to Temporary Revision 74, dated November 2007, to the Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 16 (ATA 57–00–21),'' as the appropriate source of service information in the NPRM.) Maintenance Procedure 57–401, Revision July 2008, refers to ''Between Ribs 13 and 17'' rather than ''Between Ribs 13 and 16.'' The change to refer to Rib 17 and the corresponding change in certain sections of the maintenance procedure more accurately reflect the inspection area required by this AD and specified in the MCAI.

We have revised paragraph (f) of this AD to include two separate paragraphs.

The new paragraph (f)(1) refers to Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 17 (ATA 57–00–21),'' dated July 2008, as the appropriate source of service information for doing the actions required by this AD. The new paragraph (f)(2) gives credit to operators who accomplished the actions before the effective date of this AD in accordance with Dassault Temporary Revision 74, dated November 2007.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 247 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $118,560, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–25–04 Dassault Aviation: Amendment 39–15762. Docket No. FAA–2008–0732; Directorate Identifier 2008–NM–053–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dassault Model Mystere-Falcon 50 airplanes, certificated in any category.

Subject

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

Reason

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

Analyzed in-service events revealed that corrosion of pressure relief valves in wing fuel tanks was likely to occur well before reaching their Time Between Overhaul (TBO) and could make the valves stick in the closed position.

Therefore some aircraft could have experienced wing overpressure consecutive to the latent failure of both valve units. Overpressure although not sufficient to cause static damages could have impaired the fatigue damage tolerance of the wing structure. Consequently this Airworthiness Directive (AD) mandates introduction of a new repetitive inspection of the wing structure.

The repetitive ultrasonic inspection is intended to detect incipient cracking on the stiffeners of the right-hand and left-hand wing lower panels between ribs 13 and 17 (the inspection area extends to just beyond rib 16). The corrective actions if any cracking is found include contacting Dassault for repair instructions, and doing the repair.

Actions and Compliance

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

(1) Prior to the accumulation of 14,200 total flight cycles, or within 160 flight cycles after the effective date of this AD, whichever occurs later, do the ultrasonic inspection described in Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 17 (ATA 57–00–21),'' dated July 2008. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 5,350 flight cycles.

(2) Actions done before the effective date of this AD in accordance with Dassault Temporary Revision 74, dated November 2007, to the Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check

of the Wing Lower Panels Stiffeners Between Ribs 13 and 16 (ATA 57–00–21),'' are acceptable for compliance with the requirements of paragraph (f)(1) 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, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0021, dated January 31, 2008; and Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 17 (ATA 57–00–21),'' dated July 2008; for related information.

Material Incorporated by Reference

(i) You must use Dassault Falcon 50/50EX Maintenance Manual, Maintenance Procedure 57–401, ''Non-Destructive Check of the Wing Lower Panels Stiffeners Between Ribs 13 and 17 (ATA 57–00–21),'' dated July 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 26, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29072 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 080731957–8958–01]

RIN 0605–AA27

Civil Monetary Penalties; Adjustment for Inflation

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust each civil monetary penalty provided by law within the jurisdiction of the Department of Commerce (the Department). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required the head of each agency to adjust its civil monetary penalties (CMP) for inflation no later than October 23, 1996, and requires them to make adjustments at least once every four years thereafter. These inflation adjustments will apply only to violations that occur after the effective date of this rule.

DATES: This rule is effective December 11, 2008.

ADDRESSES: Office of General Counsel, Department of Commerce, 1401 Constitution Avenue, NW., MS 5876, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peter Robbins, (202) 482–0846.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) provided for the regular evaluation of CMPs to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require each agency to issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provided that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur subsequent to the date of the publication in the **Federal Register** of the increased amount of the CMP. The first inflation adjustment of any penalty shall not exceed ten percent of such penalty.

On October 24, 1996 and November 1, 2000, and again on December 14, 2004, the Department published in the **Federal Register** a schedule of CMP adjusted for inflation as required by law. By this publication, CMPs are again being adjusted for inflation as prescribed by law.

A civil monetary penalty is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,

2. Is assessed or enforced by an agency pursuant to Federal law; and,

3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

This regulation adjusts the civil penalties that are established by law and assessed or enforced by the Department.

The actual penalty assessed for a particular violation is dependent upon a variety of factors. For example, The National Oceanic and Atmospheric Administration (NOAA) Civil Administrative Penalty Schedule (the Schedule), a compilation of internal guidelines that are used when assessing penalties for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the penalties recommended therein. The penalty ranges in the Schedule are intended to aid enforcement attorneys in determining the appropriate penalty to assess for a particular violation. Pursuant to the notice published in the **Federal Register** (59 FR 19160, April 22, 1994), the Schedule is maintained and made available for inspection by the public at specific locations.

The inflation adjustment was determined pursuant to the methodology prescribed by Public Law 101–410, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by

the cost-of-living adjustment. The term ''cost-of-living adjustment'' was defined in Public Law 104–134 to mean the percentage for each CMP by which the Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. For the purpose of computing the inflation adjustments, the CPI for June of the calendar year preceding the adjustment means the CPI for June of 2007.

Public Law 101–410 requires each rounded increase to be added to the minimum or maximum penalty amount being adjusted, and the total is the amount of such penalty, as adjusted, subject to the ten percent limitation provided by Public Law 104–134 for the first adjustment.

Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and opportunity for comment is unnecessary for this rulemaking pursuant to 5 U.S.C. 553(b)(B). It is unnecessary to ask for notice and comment because the Debt Collection Improvement Act of 1996 (the Act) required the head of each agency to adjust its civil monetary penalties no later than October 23, 1996, and at least every four years thereafter, and the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Act, states how to calculate the inflation adjustments, making such adjustments wholly non-discretionary. This rule merely adjusts the Department's CMP according to the statutory requirements. For the same reasons, there exists good cause to waive the thirty day delay in effectiveness of the rule, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and none was prepared. This rule does not contain information collection requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 6

Law enforcement, Penalties.

Lisa Casias,

Deputy Chief Financial Officer and Director for Financial Management.

■ For the reasons set forth in the preamble, subtitle A of Title 15 of the Code of Federal Regulations is amended as follows:

PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

■ 1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

■ 2. Section 6.4 is revised as follows:

§ 6.4 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective agencies or bureaus of the Department, as set forth below in this section, are hereby adjusted in accordance with the inflation adjustment procedures prescribed in Section 5, Pub. L. 101–410, from the amounts of such penalties in effect prior to December 11, 2008, to the amounts of such penalties, as thus adjusted, except for the penalties stated in paragraphs (e)(26) and (e)(27), which became effective on January 12, 2007, and except for the penalties stated in paragraphs (a)(4) and (e)(3) which became adjusted on October 16, 2007 and January 12, 2007, respectively.

(a) Bureau of Industry and Security. (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act—Violation, from $27,500 to $32,500.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act—Inspection Violation, from $25,000 to $25,000.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act—Record Keeping Violation, from $5,000 to $5,000.

(4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act (2007)—Violation, from $50,000 to $250,000.

(b) Bureau of the Census. (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics—Delinquency on Delayed Filing of Export Documentation; maximum penalty for each day's delinquency, from $1,000 to $1,000; maximum per violation, from $10,000 to $10,000.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics—Violations, from $10,000 to $10,000.

(c) Economics and Statistics Administration. 22 U.S.C. 3105(a), International Investment and Trade in Services Act—Failure to Furnish Information; minimum, from $2,500 to $2,500; maximum, from $27,500 to $32,500.

(d) International Trade Administration. (1) 19 U.S.C. 81s, Foreign Trade Zone—Violation, from $1,100 to $1,100.

(2) 16 U.S.C. 1677(f)(4), U.S.-Canada FTA Protective Order—Violation, from $120,000 to $130,000.

(e) National Oceanic and Atmospheric Administration. (1) 15 U.S.C. 5623(a)(3), Land Remote Sensing Policy Act of 1992, from $11,000 to $11,000.

(2) 15 U.S.C. 5658(c), Land Remote Sensing Policy Act of 1992, from $11,000 to $11,000.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), from $27,500 to $200,000.

(4) 16 U.S.C. 783, Sponge Act (1914), from $550 to $650.

(5) 16 U.S.C. 957, Tuna Conventions Act of 1950 (1962);

(i) Violation/Subsection (a), from $27,500 to $32,500.

(ii) Subsequent Violation/Subsection (a), from $65,000 to $70,000.

(iii) Violation/Subsection (b), from $1,100 to $1,100.

(iv) Subsequent Violation/Subsection (b), from $5,500 to $6,500.

(v) Violation/Subsection (c), from $130,000 to $140,000.

(6) 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995), from $130,000 to $140,000.

(7) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act of 1984;

(i) Violation/Subsections (a)(1)–(3), from $27,500 to $32,500.

(ii) Subsequent Violation/Subsections (a)(1)–(3), from $60,000 to $65,000.

(iii) Violation/Subsections (a)(4)–(5), from $5,500 to $6,500.

(iv) Subsequent Violation/Subsections (a)(4)–(5), from $5,500 to $6,500.

(v) Violation/Subsection (a)(6), from $130,000 to $140,000.

(8) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988, from $325,000 to $350,000.

(9) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983, from $11,000 to $11,000.

(10) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1981), from $11,000 to $11,000.

(11) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act (1990), from $120,000 to $130,000.

(12) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), from $130,000 to $140,000.

(13) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973;

(i) Knowing Violation of Section 1538 (1988), from $27,500 to $32,500.

(ii) Other Knowing Violation (1988), from $13,200 to $13,200.

(iii) Otherwise Violation (1978), from $550 to $650.

(14) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), from $130,000 to $140,000.

(15) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act of 1984;

(i) Violation, from $5,500 to $6,500.

(ii) Knowing Violation, from $11,000 to $11,000.

(16) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990;

(i) Violation, from $5,500 to $6,500.

(ii) Knowing Violation, from $11,000 to $11,000.

(17) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981;

(i) Sale and Purchase Violation, from $11,000 to $11,000.

(ii) Marking Violation, from $275 to $275.

(iii) False Labeling Violation, from $11,000 to $11,000.

(iv) Other than Marking Violation, from $11,000 to $11,000.

(18) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990), from $130,000 to $140,000.

(19) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990), from $130,000 to $140,000.

(20) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986; minimum from $500 to $500; maximum from $5,500 to $6,500.

(21) 16 U.S.C. 5010(a)(1), North Pacific Anadromous Stocks Act of 1992, from $120,000 to $130,000.

(22) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993), from $130,000 to $140,000.

(23) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990), from $130,000 to $140,000.

(24) 16 U.S.C. 5507(a)(1), High Seas Fishing Compliance Act of 1995, from $120,000 to $130,000.

(25) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from $130,000 to $140,000.

(26) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act (2007); new penalty $140,000.

(27) 16 U.S.C. 7009(c), Pacific Whiting Act of 2006 (2007); new penalty $140,000.

(28) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971);

(i) Violation, from $11,000 to $11,000.

(ii) Subsequent Violation, from $27,500 to $32,500.

(29) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), from $27,500 to $32,500.

(30) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980, from $27,500 to $32,500.

■ 3. Section 6.5 is revised to read as follows:

§ 6.5 Effective date of adjustments.

The adjustments made by § 6.4 of this part, of the penalties there specified, are effective on December 11, 2008, and said penalties, as thus adjusted by the adjustments made by § 6.4 of this part, shall apply only to violations occurring after December 11, 2008, and before the effective date of any future inflation adjustment thereto made subsequent to December 11, 2008 as provided in § 6.6 of this part.

[FR Doc. E8–29263 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2008–N–0039]

New Animal Drugs for Use in Animal Feeds; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for an increased level of monensin in four-way combination Type C medicated feeds containing ractopamine, melengestrol, monensin, and tylosin for heifers fed in confinement for slaughter; and a revision to bacterial pathogen nomenclature.

DATES: This rule is effective December 11, 2008.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200–424 that provides for use of OPTAFLEXX (ractopamine hydrochloride), HEIFERMAX 500 (melengestrol acetate), and RUMENSIN (monensin), and TYLAN (tylosin phosphate) Type A medicated articles to make dry and liquid four-way combination Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; for suppression of estrus (heat); and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes* in heifers fed in confinement for slaughter during the last 28 to 42 days on feed. The supplemental NADA provides for an increased level of monensin in four-way combination Type C medicated feeds containing ractopamine, melengestrol, monensin, and tylosin for heifers fed in confinement for slaughter; and a revision to bacterial pathogen nomenclature. The supplemental NADA is approved as of November 13, 2008, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

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

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

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.500 [Amended]

■ 2. In § 558.500, in the table in paragraph (e)(2)(x), in the ''Limitations'' column, remove ''No. 000009'' and in its

place add ''Nos. 000009 and 021641'' and in the ''Sponsor'' column add ''021641''; and remove and reserve paragraph (e)(2)(xi).

Dated: December 3, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–29177 Filed 12–11–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 576, 582, 583

[Docket No. FR–5247–F–01]

RIN 2506–AC24

Matching Requirement in McKinney-Vento Act Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The McKinney-Vento Homeless Assistance Act is the primary federal statute that addresses the issues of homelessness in the United States. Three grant programs administered by HUD under this statute (the Supportive Housing program, the Shelter Plus Care program, and the Emergency Shelter Grants program) each impose a matching requirement for a grant awarded by HUD under the program. This rule codifies, in the regulations governing these programs, the scope of the match requirement, and the responsibility of the recipient of the grant to ensure that the funds that the recipient uses to satisfy HUD's match requirements are not prohibited to be used for this purpose under any statute that may govern the matching funds. The scope of the match and the responsibility to ensure that a match is a permissible match is not a new interpretation, or new responsibility, respectively. HUD has determined, however, that codification in regulation benefits grantees, especially new recipients, since codified regulations present an easy locatable source for permanent program policies and requirements.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410–7000, telephone number 202–708–4300 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389) (McKinney-Vento Act), first enacted in 1987, was the first major, coordinated federal legislative response to homelessness. The McKinney-Vento Act authorizes funds for several federal homeless assistance programs, including four administered by HUD: Emergency Shelter Grants (ESG), Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals (SRO), Shelter Plus Care (S+C), and the Supportive Housing Program (SHP). Under these programs, HUD awards grants for the purposes of providing housing and services to homeless persons.

For three of the four programs (ESG, S+C, and SHP), the McKinney-Vento Act imposes a requirement to match certain amounts provided through the McKinney-Vento grants with an equal amount of funds. For the ESG and S+C programs, the match requirement addressed by this final rule applies to all grant funds, while under SHP, the match requirement addressed by this final rule applies only to grant funds provided for acquisition, rehabilitation, and construction. Each of these matching requirements mandates that the funds may come from any source other than the statutory source (that is, the subtitle) authorizing each program. The applicable statutory match provisions for each of these programs state that each recipient that is provided a grant under the applicable McKinney-Vento Act subtitle (that authorizes funds for ESG, S+C, or SHP) shall be required to supplement the assistance provided under this subtitle with an amount of funds from sources ''other than this subtitle.'' The applicable statutory provisions for ESG, SHP, and S+C are codified at 42 U.S.C. 11375(a)(1), 42 U.S.C. 11386(e), and 42 U.S.C. 11403b(a)(1), respectively. This final rule does not apply to resources that a recipient or grantee is required to provide in accordance with other provisions, such as annual appropriations act provisions regarding supportive services, Notice of Funding Availability provisions regarding homeless management information systems, and statutory and regulatory provisions regarding portions of operating costs and other costs not funded by HUD.

Although the statutory language does not explicitly state that funds may come from federal sources, HUD's longstanding interpretation has been that by excluding as an eligible match only those funds authorized for the specific program (that is, an S+C grant cannot be used as a match for another S+C grant), ''sources other than this subtitle'' has meant any other source, including federal sources, and HUD has accepted other federal funds as a match. HUD's longstanding interpretation was recently confirmed in the Conference Report (House Committee on Appropriations on H.R. 2764, Public Law 110–161, Books 1 and 2) accompanying the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007). The House Committee on Appropriations stated as follows:

> Further, the Committees on Appropriations note the broad statutory authority of the McKinney-Vento Homeless Assistance Act concerning the use of matching funds from any source other than the specific subtitle from which funds are awarded. The purpose of this broad statutory authority is to ensure the coordinated effort to address the needs of the homeless, which is central to the goal to end homelessness. Homeless housing programs within a community are most effective when a recipient can augment grant amounts with funds from any source, including Federal, State, local and private sources. Any funds, including Federal funds, are and have been eligible to be used as matching funds unless such funds are statutorily prohibited to be used as a match. (See Book 2 at page 2447)

The applicable McKinney-Vento provisions require the recipient to assure compliance with the match requirement. The ESG and S+C programs further require the recipients of funds under these programs to certify compliance with the match requirement, which includes describing the amount of the funds and the source of the funds. (See 42 U.S.C. 11375(a)(1) and 42 U.S.C. 11403b(a)(1).)

II. This Final Rule

Because questions about the scope of the matching requirement arise from time to time, HUD has determined to amend the regulations for the three programs to codify the broad scope of sources from which funds may be used to meet the matching requirement. Additionally, HUD is codifying that, in accordance with the applicable McKinney-Vento statutory provisions, it is the recipient's responsibility to ensure that the matching funds are eligible to be used to satisfy HUD's match requirements.

III. Findings and Certifications

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is issued as a final rule because it is simply conforming program regulations to certain statutory requirements. No discretion or interpretation is being exercised in the codification of these requirements. Therefore, this rule would not have a significant impact on entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers are 14.231, 14.235, and 14.238.

List of Subjects

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Individuals with disabilities, Mental health programs, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Leasing, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated above, HUD amends 24 CFR parts 576, 582, and 583 as follows:

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

■ 1. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

■ 2. In § 576.51, paragraph (a) is revised to read as follows:

§ 576.51 Matching funds.

(a) *General.* (1) Each grantee, other than a territory, must match the funding provided by HUD under this part as set forth in 42 U.S.C. 11375. This statute provides that a grantee may use funds from any source, including any other federal source (but excluding the specific statutory subtitle from which ESG funds are provided), as well as State, local, and private sources, provided that funds from the other source are not statutorily prohibited to be used as a match.

(2) The first $100,000 of any assistance provided to a recipient that is a State is not required to be matched, but the benefit of the unmatched amount must be shared as provided in 42 U.S.C. 11375(c)(4). Matching funds must be provided after the date of the grant award to the grantee. Funds used to match a previous ESG grant may not be used to match a subsequent grant award under this part. A grantee may comply with this requirement by providing the matching funds itself, or through matching funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(3) It is the responsibility of the grantee to ensure that any funds used as matching funds are eligible under the laws governing the funds to be used as matching funds for a grant awarded under this program.

* * * * *

PART 582—SHELTER PLUS CARE

■ 3. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11470b.

■ 4. In § 582.110, paragraph (a) is revised to read as follows:

§ 582.110 Matching requirements.

(a) *Matching rental assistance with supportive services.* (1) To qualify for rental assistance grants, an applicant must certify that it will provide or ensure the provision of supportive services, including funding the services itself if the planned resources do not become available for any reason, appropriate to the needs of the population being served, and at least equal in value to the aggregate amount of rental assistance funded by HUD. The supportive services may be newly created for the program or already in operation, and may be provided or funded by other Federal, State, local, or private programs in accordance with 42 U.S.C. 11403b. This statute provides that a recipient may use funds from any source, including any other Federal source (but excluding the specific statutory subtitle from which S+C funds are provided), as well as State, local, and private sources, provided that funds from the other source are not statutorily prohibited to be used as a match.

(2) Only services that are provided after the execution of the grant agreement may count toward the match.

(3) It is the responsibility of the recipient to ensure that any funds or services used to satisfy the matching requirements of this section are eligible under the laws governing the funds or services to be used as matching funds or services for a grant awarded under this program.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

■ 5. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

■ 6. In § 583.145, paragraph (b) is revised to read as follows

§ 583.145 Matching requirements.

* * * * *

(b) *Cash resources.* The matching funds must be cash resources provided to the project by one or more of the following: the recipient, the Federal government, State and local governments, and private resources, in accordance with 42 U.S.C. 11386. This statute provides that a recipient may use funds from any source, including any other Federal source (but excluding the specific statutory subtitle from which Supportive Housing Program funds are provided), as well as State, local, and private sources, provided that funds from the other source are not statutorily prohibited to be used as a match. It is the responsibility of the recipient to ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds to be used as matching funds for a grant awarded under this program.

* * * * *

Dated: November 21, 2008.

Susan D. Peppler,

Assistant Secretary for Community Planning and Development.

[FR Doc. E8–29304 Filed 12–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9430]

RIN 1545–BH99

Information Reporting for Discharges of Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9430) that were published in the **Federal Register** on Monday, November 10, 2008 (73 FR 66539) relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations.

DATES: *Effective Date:* This correction is effective December 11, 2008, and is applicable on November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 6050P of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9430) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9430), which was the subject of FR Doc. E8–26676, is corrected as follows:

On page 66540, column 1, in the preamble, under the paragraph heading ''Reasons for Change'', first paragraph of the column, line 14, the language ''Treasury Department and IRS is'' is corrected to read ''Treasury Department and IRS are''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–29273 Filed 12–10–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9430]

RIN 1545–BH99

Information Reporting for Discharges of Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9430) that were published in the **Federal Register** on Monday, November 10, 2008 (73 FR 66539) relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations.

DATES: *Effective Date:* This correction is effective December 11, 2008, and is applicable on November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 6050P of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9430) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6050P–1T is amended by revising an entry for (a) through (b)(2)(i)(G) [Reserved] as follows:

§ 1.6050P–1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) Through (b)(2)(i)(G) [Reserved]. For further guidance, see § 1.6050P–1(a) through (b)(2)(i)(G).

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–29276 Filed 12–10–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 26

[Docket No. OJP (DOJ)–1464; AG Order No. 3024–2008]

RIN 1121–AA74

Office of the Attorney General; Certification Process for State Capital Counsel Systems

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: The USA PATRIOT Improvement and Reauthorization Act of 2005 instructs the Attorney General to promulgate regulations to implement certification procedures for states seeking to qualify for the expedited federal habeas corpus review procedures in capital cases under chapter 154 of title 28, United States Code. The procedural benefits of chapter 154 are available to states that establish a mechanism for providing counsel to indigent capital defendants in state postconviction proceedings that satisfies certain statutory requirements. This rule carries out the Act's requirement of issuing regulations for the certification procedure.

DATES: *Effective Date:* This rule is effective January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Hendley, Associate Director for Policy, Office of Policy and Legislation, Criminal Division, U.S Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530, Telephone: 202–514–1808.

SUPPLEMENTARY INFORMATION: Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005 (''the Act''), was signed into law on March 9, 2006. Section 507 of that Act amends chapter 154 of title 28 of the United States Code. Chapter 154 offers procedural benefits in federal habeas corpus review to states that go beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by providing counsel also to capital defendants in state postconviction proceedings. The chapter 154 procedures include special provisions relating to stays of execution (28 U.S.C. 2262), the time for filing federal habeas corpus applications (28 U.S.C. 2263), the scope of federal habeas corpus review (28 U.S.C. 2264), and time limits for federal district courts and courts of appeals to determine habeas corpus applications and related appeals (28 U.S.C. 2266). See 152 Cong. Rec. S1620, 1624–28 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (explanation of procedural benefits to states under chapter 154); 141 Cong. Rec. 9303–06 (Mar. 24, 1995) (remarks of Sen. Specter) (explaining the historical problem of capital habeas delay motivating the enactment of habeas reforms).

Although chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132), the determination that a state was eligible for the procedural benefits of chapter 154 had been left to the federal court of appeals for the circuit in which the state was located. The Act amended sections 2261(b) and 2265 of title 28 to assign responsibility for chapter 154 certification to the Attorney General of the United States, subject to review by the Court of Appeals for the District of Columbia Circuit. Section 2265 as amended makes clear that the only requirements that the Attorney General may impose for a state to receive certification are those expressly stated in chapter 154. See 28 U.S.C. 2265(a)(3) (''There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.''). It also provides that the date on which a state established the mechanism that qualifies it for certification is the effective date of the certification. See 28 U.S.C. 2265(a)(2).

In addition to the changes affecting certification, the Act amends section 2261(d) to permit the same counsel that has represented a prisoner on direct appeal to represent the prisoner in postconviction proceedings without limitation, and it amends section 2266(b)(1)(A) to extend the time for a district court to rule on a chapter 154 petition from 180 days to 450 days.

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. The Department of Justice published a proposed rule in the **Federal Register** on June 6, 2007, for this purpose, which would add a new subpart entitled ''Certification Process for State Capital Counsel Systems'' to 28 CFR part 26. See 72 FR 31217 (June 6, 2007). The original comment period ended on August 6, 2007. The Department published a notice reopening the comment period on August 9, 2007, and the reopened comment period ended on September 24, 2007. See 72 FR 44816 (Aug. 9, 2007).

A summary of the comments received on the proposed rule follows, including discussion of changes in the final rule based on the comments received, after which a section-by-section analysis for the final rule is provided.

Summary of Comments

Comments on the proposed rule were received from members of the public, professional groups of lawyers and judges, lawyers representing capital defendants, and advocacy groups. More than 32,000 separate comments were received, although the vast majority appeared to be a form e-mail message. Nevertheless, each comment was individually reviewed by the Department to ensure that all public input on the proposed rule was considered.

The Department made the following changes to the proposed rule based on the comments: (1) Modifying the definition of ''State postconviction proceedings'' in § 26.21 to clarify the range of covered proceedings; (2) modifying the initial sentences in § 26.22(b) and (c) to be more explicit about the scope of the chapter 154 requirements; (3) modifying § 26.23(b)(2) to reflect that in some states the highest court with jurisdiction over criminal matters is not the state supreme court; (4) adding an explicit statement in § 26.23(d) that the Attorney General will determine the date on which a qualifying state capital counsel mechanism was established, as required by 28 U.S.C. 2265(a)(1)(B); (5) modifying § 26.23(e), relating to the effect of changes in a state's capital counsel mechanism; and (6) correcting a citation error in the regulatory certification in the rule relating to federalism, which referenced Executive Order 12612 instead of Executive Order 13132. The details of these changes and the reasons they were made are discussed below in connection with the comments that suggested them.

Some of the commenters requested that additional time be provided for comment. This was done by publication of the notice reopening the comment period, appearing at 72 FR 44816 (Aug. 9, 2007).

Most of the critical comments received on the proposed rule reflected misunderstandings of the nature of the functions that chapter 154 requires the Attorney General to perform, and particularly, of the limited legal discretion that the Attorney General possesses under the statutory provisions. Chapter 154 provides expedited federal habeas corpus procedures in capital cases for states that establish a mechanism for providing counsel to indigent capital defendants in state postconviction proceedings that satisfies certain statutory requirements. The 2006 amendments to chapter 154 give the Attorney General the responsibility to

determine whether a states satisfies the requirements of chapter 154, subject to de novo review by the Court of Appeals for the District of Columbia Circuit. See 28 U.S.C. 2261(b), 2265. Section 2265 as amended makes clear that the only requirements that may be imposed for a state to receive certification are those expressly stated in chapter 154. See 28 U.S.C. 2265(a)(3) (''There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'').

Because of this limitation, there is relatively little that the Attorney General has had to determine—or is free to determine—in the formulation of the rule. Hence, the rule in large measure simply recounts and provides illustration relating to the express statutory requirements for certification, addresses some limited interpretive questions, and outlines a procedure for states' requests for certification. The many ideas proposed in the comments for limiting chapter 154 certification to states that satisfy capital counsel standards that are not expressly stated in chapter 154 cannot be incorporated into the rule, because to do so would conflict with the statutory provision that there are no certification requirements beyond those that chapter 154 expressly states.

With this background, specific comments are discussed under the following headings:

I. Responsibility for Certification

A. Role of the United States Attorney General

Some commenters argued that the Attorney General would have a conflict of interest in carrying out the certification function for state capital counsel mechanisms required by chapter 154. A comment from three U.S. Senators, for example, stated that the proposed rule would permit the ''potential structural bias'' of the Attorney General in favor of certification to override the requirements of the law.

In other comments, an argument appeared that the discharge of these functions by the Attorney General would contravene Rule 1.7(a)(2) of the American Bar Association (ABA) Model Rules of Professional Conduct and comparable rules adopted by most state supreme courts. In relevant part, the cited rule provides that ''a lawyer shall not represent a client if * * * there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.'' (28 U.S.C. 530B provides that federal government attorneys are subject to state laws and rules and local federal court rules governing attorneys in the states where they engage in their duties to the same extent as other attorneys in those states.) For the most part, the commenters who made this argument seemed to be urging that the Attorney General should not carry out the functions required by chapter 154 at all, in order to avoid the alleged conflict of interest.

As to the specific nature of the alleged conflict of interest, the commenters' argument proceeded along the following lines: (1) The Attorney General may be asked to impose exacting requirements on the states—relating to such matters as provision of ''competent'' counsel and payment of ''reasonable litigation expenses'' in state postconviction proceedings in capital cases—as conditions for chapter 154 certification; (2) whatever requirements the Attorney General adopts under these headings in the context of chapter 154 may be cited as analogical or persuasive precedent for the judicial interpretation of the concept of constitutionally effective assistance in federal criminal proceedings in which there is a constitutional right to counsel; (3) hence, if the Attorney General adopts expansive requirements relating to state capital counsel under chapter 154, courts may interpret more expansively the requirements for constitutionally effective assistance of counsel in federal criminal proceedings; (4) such expansive interpretations of the requirements for constitutionally effective assistance of counsel in federal criminal proceedings would work against prosecutorial interests for which the Attorney General is responsible, as setting the bar higher for constitutionally effective assistance makes it more likely that the performance of defense counsel will be found to be constitutionally deficient, resulting in the overturning of criminal judgments that federal prosecutors have secured; (5) because of this potential spillover effect, the Attorney General has a conflict of interest in carrying out the chapter 154 functions.

Addressing these comments requires explanation of the purpose of the amendments to chapter 154 that were enacted in 2006. According to their legislative history, the 2006 amendments were enacted by Congress in order to address a perceived existing conflict of interest. As originally enacted in 1996, chapter 154 did not state who would decide whether a state had satisfied its requirements. As a practical matter, this left the question to the various federal district courts and courts of appeals, as the issue arose in the litigation of capital cases. None of these courts found that the chapter 154 procedures were applicable in any case. Congress believed that a conflict of interest contributed to this result, in that the district and appellate courts would be subject to uncongenial requirements under chapter 154 if it were found to apply, including time limits on their review proceedings. See 152 Cong. Rec. S1620,1624–25 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl, sponsor of the 2006 amendments to chapter 154) (''[T]he 1996 * * * reforms * * * left the decision of whether a State qualified for the incentive to the same courts that were impacted by the time limits. This has proved to be a mistake. Chapter 154 has received an extremely cramped interpretation, denying the benefits of qualification to States that do provide qualified counsel and eliminating the incentive for other States to provide counsel * * * [T]his bill * * * removes the qualification decision to a neutral forum.''); 151 Cong. Rec. E2640 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (similar explanation by House sponsor).

The 2006 amendments sought to resolve this problem by assigning the decision concerning a state's satisfaction of the chapter 154 requirements to an official and a court that would have no comparable disincentive to certify compliance with the requirements. The Attorney General now makes this determination, subject to de novo review by the DC Circuit Court of Appeals. 28 U.S.C. 2265. The DC Circuit has no review jurisdiction over state capital cases and thus would not be affected by the application of the chapter 154 procedures in federal habeas corpus review of such cases. See 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (''Under new section 2265, the Attorney General of the United States will decide if a State has established a qualifying mechanism, and that decision will be reviewed by the DC Circuit, the only

Federal circuit that does not handle State-prisoner habeas cases and therefore is not impacted by the qualification decision.''); 151 Cong. Rec. E2640 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (similar explanation).

Against this background, the critical comments noted above essentially are complaining that, in seeking to correct one conflict of interest, Congress has created another. Even if this contention were valid, it could not support the suggestion that the Attorney General abrogate his certification responsibilities under chapter 154. Chapter 154 does not merely authorize or invite the Attorney General to carry out these functions, as some commenters apparently assumed; it requires him to do so. See 28 U.S.C. 2265(a)(1) (''If requested by an appropriate State official, the Attorney General of the United States shall determine'' whether the state has established a qualifying capital counsel mechanism); *Id.* at 2265(b) (''The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).'').

Alternatively, some commenters suggested that the Attorney General avoid the alleged conflict of interest by eschewing personal involvement in carrying out the chapter 154 functions and delegating them entirely to the Justice Department's Inspector General, who supposedly would be free of the alleged conflict. The rule has not been changed on this point because the underlying claim of a conflict of interest is not well-founded.

As noted, some commenters claimed that the Attorney General's involvement in the chapter 154 certification functions would violate ABA Model Rule 1.7 (and comparable state rules) that bar a lawyer from representing a client if there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. In carrying out the chapter 154 certification function with which he is charged by the laws of the United States, the Attorney General's client is the United States. Hence, the question is whether the Attorney General's representation of the United States would be materially limited by the competing interests identified in the rule—responsibility to another client, a former client, or a third person, or a personal interest.

This question must be answered in the negative. The Attorney General has no responsibilities to any other client that would materially limit the discharge of the chapter 154 certification function. The Attorney General's only relevant current client is the United States, which has expressly directed the discharge of that function by law. There is also no reason to believe that the Attorney General has any responsibility to a ''former client'' or ''third person,'' or any ''personal interest,'' that would materially impair his representation of the United States in the discharge of that function. The Attorney General has a professional obligation to abide by the ''client's decisions concerning the objectives of representation,'' ABA Model Rule 1.2(a), and it is difficult to conceive how the Attorney General could have such a disqualifying conflict in representing the United States when it is the United States that has mandated through its laws that he carry out the chapter 154 certification function.

As noted above, some commenters argued further that there is a conflict between the Attorney General's prosecutorial responsibilities and his responsibilities under chapter 154, such as determining what constitutes ''competent counsel'' for purposes of the chapter. This argument misunderstands the nature of the Attorney General's functions under chapter 154. Chapter 154 does not involve the Attorney General in assessing or setting standards for the performance of defense counsel in state postconviction proceedings. Rather, the Attorney General's role is limited to determining whether the state has established a mechanism for providing representation to indigent capital defendants in state postconviction proceedings, and whether that mechanism satisfies certain criteria set out in chapter 154. See 28 U.S.C. 2261(b)(1), 2265. Moreover, the Attorney General has no discretion in defining the requirements that states must satisfy to achieve chapter 154 certification. Chapter 154 specifies those requirements and provides that ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' 28 U.S.C. 2265(a)(3).

The suggestion that the Attorney General delegate his functions under chapter 154 to the Department's Inspector General bears further discussion. This suggestion is apparently inspired by the assignment of certain functions to the Inspector General in a different set of capital counsel provisions that Congress enacted in 2004 as part of the Innocence Protection Act, Public Law 108–405, tit. IV, 118 Stat. 2278 (2004). The Innocence Protection Act authorized a grant program, to be administered by the Attorney General, to assist states in implementing certain federally prescribed capital counsel standards. *Id.* sections 421–26, codified at 42 U.S.C. 14163–63e.

The capital counsel provisions of the Innocence Protection Act differ from chapter 154 in that they provide for an ongoing federal oversight role with respect to state implementation of the capital counsel standards set forth in that Act. In connection with that oversight function, the Innocence Protection Act charges the Inspector General with evaluating whether the federal standards are being met in states that receive funding under the program. 42 U.S.C. 14163d(a). However, even in that context, the role contemplated for the Inspector General is only advisory. The ultimate determination concerning state compliance with the capital counsel standards, and concerning any remedial measures needed to achieve such compliance, is reserved to the Attorney General. *Id.* at 14163d(b)(2) (''If the Attorney General, after reviewing a[n Inspector General] report * * * determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days * * * the Attorney General shall * * * issue guidance to the State regarding corrective action to bring the State into compliance.'')

Hence, the Innocence Protection Act, like chapter 154, is inconsistent with these commenters' theory that the Attorney General has an inherent conflict of interest in determining whether state capital counsel systems meet federal statutory standards.

B. Role of the State Attorneys General

Section 2265(a)(1) in chapter 154 requires the Attorney General to determine state compliance with the chapter 154 requirements ''[i]f requested by an appropriate State official.'' Section 26.21 in the rule says that ''*[a]ppropriate State official* means the State Attorney General, except that, in a state in which the State Attorney General does not have responsibility for Federal habeas corpus litigation, it means the Chief Executive thereof.''

Some commenters objected that the state attorney general is not an appropriate official to request chapter 154 certification, and that responsibility for doing so should instead be assigned to some ''neutral'' official, or

alternatively that it should be left to ''the state'' to decide what official may apply for certification. These commenters argued that the state attorney general should be disqualified from seeking chapter 154 certification because of a conflict of interest. The alleged conflict of interest would arise from the potential benefits to the state attorney general in capital cases if the chapter 154 procedures for federal habeas corpus review are made applicable in such cases.

The matter needs to be analyzed in terms of the dual objectives of chapter 154: improving the representation of capital defendants in state postconviction proceedings, and reducing unnecessarily protracted proceedings in federal habeas corpus review of state capital cases. With respect to the latter objective, the state attorney general's responsibility for defending state capital judgments and securing their execution without unnecessary delay may well be a positive incentive to seek chapter 154 certification. Hence, in relation to this legislative objective, the capital litigation responsibilities of state attorneys general are not disqualifying biases or conflicts, but rather a positive characteristic that makes these officials suitable to seek realization of the legislative objective by pursuing chapter 154 certification for their states. In contrast, reassigning responsibility for seeking chapter 154 certification to a ''neutral'' official could thwart realization of the legislative objective by giving that responsibility to someone who has less motivation or, indeed, no motivation, to do so.

With respect to the other legislative objective—improving capital case representation at the postconviction stage—the commenters argue that the state attorney general's interests may lead him to make unsound judgments whether the state has satisfied the capital counsel requirements of chapter 154. However, the state attorney general under the statutes and the rule is an applicant for certification, not the decisionmaker concerning the state's compliance with the chapter 154 standards. The U.S. Attorney General will make an independent determination of that question after considering the state attorney general's submission, as well as any supporting or contrary information or views that any interested entity chooses to submit through the public comment procedure provided in § 26.23(c)–(d). Hence, the objection concerning bias or conflict of interest on this point is without force as well.

Prior to the 2006 amendments, federal courts determined whether a state had satisfied the chapter 154 requirements in the course of adjudicating habeas corpus petitions brought by capital convicts from that state. Hence, in a state in which the state attorney general has responsibility for federal habeas corpus litigation in capital cases, the state attorney general was able to seek a determination that the state had satisfied the chapter 154 requirements as part of his or her litigation functions. There is no basis for interpreting the 2006 amendments as having divested state attorneys general of this authority. Doing so would thwart the objectives of the 2006 amendments by disabling the officials with the greatest incentive and capacity to seek chapter 154 certification in most states.

A further consideration is that the Attorney General's determination whether a state has satisfied the chapter 154 capital counsel requirements is not necessarily final. A state could seek de novo review of the Attorney General's determination by the DC Circuit Court of Appeals. 28 U.S.C. 2265(c). Seeking such review would commonly be within the litigation authority of the state attorney general, regardless of which official had sought the initial determination from the U.S. Attorney General. It would be odd to deem the state attorney general an ''[in]appropriate'' official to seek a determination concerning satisfaction of the chapter 154 requirements from the Attorney General in the first instance, where the statutes interpose no obstacle to state attorneys general seeking the same determination from the DC Circuit at a later stage.

Some commenters who sought to disqualify state attorneys general from seeking chapter 154 certification urged in the alternative that ''the state'' should decide which official may seek such certification. However, how ''the state'' makes such a decision requires further definition or explanation. Of course, many states deal with the Federal Government concerning satisfaction of federal law requirements through their attorneys general, but these commenters would reject that approach in this context. Alternatively, the suggestion may be that a state should not be permitted to seek chapter 154 certification unless it enacts legislation authorizing a particular official to seek the certification. Chapter 154, however, does not state that a legislative act by the state is a precondition for seeking chapter 154 certification. A further concern is that uncertainty whether ''the state'' has authorized a particular official to seek chapter 154 certification could lead to challenges to certification requests by such an official, or could deter officials from seeking certification, even if there were no question that the state had established a capital counsel mechanism satisfying chapter 154. Not specifying which state officials may apply for chapter 154 certification would thus create new impediments for the states in seeking such certification. For the foregoing reasons, the relevant definition in § 26.21 has not been changed in the final rule.

II. Requirements for Certification

Some commenters noted that the first sentence in § 26.22(b) did not expressly limit to capital cases the requirement that a state establish a mechanism for compensation of appointed counsel in state postconviction proceedings. While this limitation is clear from chapter 154 and from numerous statements in the proposed rule (including the examples in § 26.22(b)), these commenters are correct that the limitation was not set forth in the first sentence of § 26.22(b). The omission has been corrected in the final rule. Similarly, commenters noted that the first sentence in § 26.22(c) in the proposed rule did not expressly limit to postconviction proceedings in capital cases the requirement that the state establish a mechanism for the payment of reasonable litigation expenses. That omission has also been corrected in the final rule.

Comments of a more substantive nature on the requirements for certification were as follows:

A. In General

Some commenters urged that the rule be revised to provide further specification concerning the ''standards of competency,'' ''competent counsel,'' ''compensation'' of appointed counsel, and ''reasonable litigation expenses'' that a state's postconviction capital counsel system must provide to qualify for chapter 154 certification.

For example, three U.S. Senators submitted comments stating that the proposed rule failed to provide adequate guidance to states about meeting the requirements of chapter 154. These Senators argued that the proposed rule conflicted with a legislative intent to ensure competent counsel for state capital convicts in exchange for expedited federal habeas corpus review. They cited in support certain statements by the sponsors of the 2006 amendments that they viewed as implying that the rule must require states to provide ''adequate'' or ''quality'' counsel for such convicts. According to these Senators, the rule should specify what would constitute

adequate counsel and ensure that the states provide such counsel.

Similarly, the Judicial Conference of the United States in its comments urged elaboration or supplementation of the statutory requirements, to make clear what states must do for certification and to ensure that capital defendants receive adequate representation in state postconviction proceedings. The comments pointed in this connection to a resolution appearing in the Report of the Proceedings of the Judicial Conference of the United States (Mar. 13, 1990, pp. 8–9). In that resolution, the Judicial Conference endorsed the recommendations in the 1989 Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (commonly known as the ''Powell Committee'' report, see 135 Cong. Rec. 24694–98 (Oct. 16, 1989)), with the modification that ''[s]pecific mandatory standards similar to those set forth in the Anti-Drug Abuse Act of 1988 [Pub. L. 100–690, tit. VII, subtit. A, 102 Stat. 4181, 4393–94 (Nov. 18, 1988), now codified at 18 U.S.C. 3599] should be required with respect to the appointment and compensation of counsel for capital defendants at all stages of the state and federal capital punishment litigation.'' The capital counsel standards set forth in 18 U.S.C. 3599 generally require appointment for indigents of capital counsel having five years of bar admission and three years of felony litigation experience; compensation of such counsel at an hourly rate of not more than $125, but with authority for the Judicial Conference to increase the limit to reflect adjustments in general federal pay rates; and defrayal of reasonably necessary investigative, expert, or other services not exceeding $7,500, but with authority for the court to authorize higher amounts for services of an unusual character or duration with the approval of the chief judge or delegee.

These recommendations have not been adopted in the final rule because they misunderstand the Attorney General's authority under chapter 154. The commenters are correct that the text of chapter 154 needs to be supplemented in defining competency standards for postconviction capital counsel, but mistaken as to who must effect that supplementation. Responsibility to set competency standards for postconviction capital counsel is assigned to the states that seek certification. 28 U.S.C. 2265(a)(1)(C) (Attorney General to determine ''whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A) [*i.e.*, capital postconviction proceedings]'').

There is one other reference to counsel competency in 28 U.S.C. 2265(a)(1)(A), which says that the Attorney General is to determine ''whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of *competent counsel* in State postconviction proceedings brought by indigent prisoners who have been sentenced to death.'' (Emphasis added.) In context, the phrase ''competent counsel'' in section 2265(a)(1)(A) must be understood as a reference to the standards of counsel competency that the states are required to adopt by section 2265(a)(1)(C). Section 2265(a)(1)(A) requires the state to establish a mechanism for the appointment of postconviction capital counsel who meet the standards of competency provided by the state. If the reference to ''competent counsel'' in section 2265(a)(1)(A) were a directive to the Attorney General to set independently the counsel competency standards that states must meet for chapter 154 certification, then the section 2265(a)(1)(C) requirement that the states provide such standards would be superfluous, and section 2265 would be internally inconsistent as to the assignment of responsibility for setting counsel competency standards.

As the Judicial Conference noted in its comments, its March 1990 Report rejected an aspect of the Powell Committee's original proposal by urging that states be required to satisfy federally prescribed standards of counsel competency. But Congress did not accept the Conference's recommendation on this point, instead making the states responsible to provide the standards of competency. See 28 U.S.C. 2265(a)(1)(C). The Attorney General has no authority to overrule Congress and prescribe standards that others unsuccessfully urged Congress to impose.

With respect to compensation of counsel, various commenters urged that the rule be more prescriptive regarding the amount of required compensation, to ensure that state postconviction capital counsel are ''reasonably'' or ''adequately'' compensated or receive ''fair'' compensation. Again, such comments urge the regulatory adoption of measures that Congress declined to include in chapter 154. In contrast to the immediately succeeding phrase concerning litigation expenses in section 2265(a)(1)(A), which requires a mechanism for payment of ''reasonable'' litigation expenses, the language relating to ''compensation'' in the same provision comes with no qualifier. The statute requires only that the state have a mechanism for the ''compensation'' of postconviction capital counsel, leaving determination of the level of compensation to the states. Again, the Attorney General is prohibited from supplanting the states' discretion in this area, because ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' 28 U.S.C. 2265(a)(3).

Finally, with respect to litigation expenses, the statute requires only that the state establish a mechanism for payment of reasonable litigation expenses. 28 U.S.C. 2265(a)(1)(A). There is no basis for prescribing more specific requirements in the rule. For example, if a state statute or rule that applies to capital postconviction proceedings simply directs courts to reimburse counsel for reasonable litigation expenses, it would satisfy the requirement under chapter 154. See § 26.22(c), Ex. 1. Such a state provision would state the requirement in the same terms as chapter 154 itself, and there would be no basis for saying that the state had not satisfied the requirements ''expressly stated'' in the chapter with respect to payment of litigation expenses. 28 U.S.C. 2265(a)(1)(A), (3).

The foregoing should not be understood as disapproving of the more specific requirements that Congress has adopted for federal court proceedings in 18 U.S.C. 3599. Those requirements represent one approach to ensuring that defendants will be adequately represented, and states may look to them as a possible model for capital counsel standards in their own systems. The rule gives examples of measures that would qualify for chapter 154 certification that are similar to the standards of 18 U.S.C. 3599. See § 26.22(b), Ex. 1; § 26.22(c), Ex. 2; § 26.22(d), Ex.1. But these are not the only standards consistent with the statutory requirements for certification, and chapter 154 does not allow the Attorney General to supplant the states' discretion in further specifying such standards.

B. Definition of Requirements

The comments that urged further specification of the requirements for certification in the rule pointed to various possible models. As noted above, some cited the capital counsel requirements for federal proceedings that appear in 18 U.S.C. 3599. Others recommended incorporating specifications governing the design and operation of state capital counsel

systems based on the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. Where comments of this type acknowledged the existence of 28 U.S.C. 2265(a)(3) (''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter''), they argued that it did not make any difference, on the ground that all of the proposed additions to the express statutory requirements can be regarded as mere definitions of terms appearing in the statute, such as those relating to standards of competency or payment of counsel for services or expenses. This theory may be most conveniently discussed in relation to particular key terms: ''Competent counsel,'' ''compensation,'' and ''reasonable litigation expenses.''

''Competent Counsel''

This term has already been discussed. It is correct that there is a need for additional articulation of counsel competency standards, but those standards are to be decided by the states. See 28 U.S.C. 2265(a)(1)(C). It makes no difference for this purpose whether the standards in question are characterized as supplementation or as definition of the term ''competent counsel.'' Regardless of labeling, the responsibility for further articulation of the counsel competency standards is assigned to the states, not to the Attorney General.

Some comments argued specifically that ''competent counsel'' must be defined in the rule to include timing requirements for appointment of postconviction capital counsel, citing *Spears* v. *Stewart*, 283 F.3d 992, 1019 (9th Cir. 2002). However, the 2006 amendments were enacted to overcome decisions like *Spears* and ensure that there would be no future impediments to the implementation of chapter 154 through the creation of extra-statutory requirements for certification: ''In *Spears* v. *Stewart*, 283 F.3d 992 * * * the Ninth Circuit held that even though Arizona had established a qualifying system and even though the State court had appointed counsel under that system, the Federal Court could still deny the State the benefit of qualification because of a delay in appointing counsel * * *. [T]his bill abrogates * * * th[is] holding and removes the qualification decision to a neutral forum * * *. Paragraph (a)(3) of new section 2265 forbids creation of additional requirements not expressly stated in the chapter, as was done in the *Spears* case.'' 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl); see 151 Cong. Rec. E2639–40 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (critique of *Spears*).

''Compensation''

As discussed above, Chapter 154 simply requires that states provide ''compensation'' for postconviction capital counsel. The term ''compensation'' is not ambiguous and does not need further definition in the rule. Prescribing minimum amounts of compensation to ensure ''adequate'' or ''reasonable'' compensation, as some commenters have proposed, would not define any term in the statutes, but rather would add to the statutory requirements for certification, which 28 U.S.C. 2265(a)(3) does not allow.

''Reasonable Litigation Expenses''

Likewise, there is no need for further definition in the rule to resolve ambiguity in the meaning of ''reasonable litigation expenses,'' or in any other term in the statutes that might be seized as a peg on which to hang additional federal prescriptions. As discussed above, a state could, for example, formulate its capital counsel provisions in essentially the same terms as chapter 154 itself. If a state did so, it would have provided for all that chapter 154 requires, and there would be no basis for denying certification.

The capital counsel requirements in chapter 154 reflect Congress's judgment as to the proper balance in realizing the chapter's objectives, neither setting the bar too low to benefit indigent capital defendants in state postconviction proceedings, nor so high as to deter states from attempting to satisfy these requirements and seek certification. Prior to the 2006 amendments, the federal courts upset this balance, as Congress perceived the matter, by adding to the statutory requirements and refusing to find chapter 154 applicable in any case. Congress therefore transferred responsibility for chapter 154 certification to the Attorney General and the DC Circuit Court of Appeals and specified that ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' 28 U.S.C. 2265(a)(3); see 152 Cong. Rec. S1620, 1624–25 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl). This balance would again be upset if requirements were prescribed for chapter 154 certification that do not appear in the statutes, either overtly or in the guise of ''defining'' statutory terms.

C. Timing of Collateral Review

Some comments addressed the eligibility for chapter 154 certification of states in which collateral review and direct review in capital cases take place concurrently. One of these comments noted that the definition of ''State postconviction proceedings'' in § 26.21 in the proposed rule retained some vestiges of a distinction between ''unitary review'' systems and other state review systems, which has no place in chapter 154 following the 2006 amendments. The point is well taken and the final rule has been changed to reflect it.

The original version of chapter 154 had separate provisions for (i) states following the common bifurcated approach in which collateral proceedings occur subsequent to the completion of direct review, governed by former section 2261(b)–(d), and (ii) states with ''unitary review'' procedures (defined as procedures authorizing a capital defendant ''to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack''), governed by former section 2265.

In *Ashmush* v. *Woodford*, 202 F.3d 1160 (9th Cir. 2000), the court assessed California's unitary review system for capital cases under former section 2265. The court found that the system did not qualify the state for the chapter 154 procedures, on the view that California's provisions relating to postconviction capital counsel were not a ''rule of its court of last resort or * * * statute,'' as former section 2265 required.

The 2006 amendments were intended to overturn this decision. See 152 Cong. Rec. S1624–25 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl). They replaced the separate provisions for bifurcated review systems and ''unitary review'' systems with uniform standards in the current sections 2261(b) and 2265. The amendments eliminated the language in former section 2261(b) that confined its application to states that conduct postconviction review following direct review, and eliminated the language in former section 2265 that confined its application to states that conduct unitary review. The result is that the current versions of these provisions apply to all state systems. See 152 Cong. Rec. S1620 (remarks of Senator Kyl) (2006 amendments ''simplif[y] * * * the chapter 154 qualification standard, which obviates the need for separate standards for those States that make direct and collateral review into separate vehicles and those States with unitary procedures'').

Given this history and the current text of chapter 154, it is clear that certification is available to all states that satisfy the chapter's now-uniform requirements in relation to collateral proceedings in capital cases, without distinction between states in which such collateral proceedings occur following direct review and states in which such collateral proceedings occur concurrently with direct review. It is also clear that the rule need not refer to a distinction between states with ''unitary review'' systems and others. ''State postconviction proceedings'' have accordingly been defined in § 26.21 in the final rule as ''collateral proceedings in state court, regardless of whether the state conducts such proceedings after or concurrently with direct state review.''

III. Certification Procedure

A. Initial Certification

Some comments noted that the proposed rule did not refer to the requirement in 28 U.S.C. 2265(a)(1)(B) that the Attorney General determine the date on which a state established its qualifying capital counsel mechanism. Since section 2265(a)(2) makes the certification effective as of this date, the Attorney General's determination of this date affects the applicability of chapter 154 to cases in which state postconviction proceedings occurred before the certification but after the state established a qualifying capital counsel mechanism. Section 26.23(d) has accordingly been modified in the final rule to make clear that the Attorney General's certification will include a determination of the date on which the qualifying capital counsel mechanism was established.

The attorneys general of Texas and Oklahoma requested a change in § 26.23(b)(2), which concerns notice to the chief justice of the state's highest court that the state has requested chapter 154 certification. The highest court with jurisdiction over criminal matters in their states is not the state supreme court, but a separate court of criminal appeals, which would more appropriately receive notice concerning the request for chapter 154 certification. Section 26.23(b)(2) has been modified in the final rule to take account of this fact.

Other comments opined that the procedures in § 26.23 for the Attorney General to receive public input and make certification decisions are inadequate because they do not meet requirements for rulemaking or adjudication under the Administrative Procedure Act (''APA'') or the Constitution. Additional requirements suggested in these comments included (i) further specification of the information a state must submit or the showing a state must make to be eligible for certification; (ii) specification of the amount of time that will be allowed for public comment or input concerning a proposed certification; (iii) personal notice to potentially affected persons concerning a proposed certification; (iv) full disclosure of the information considered in reaching a certification decision and the reasons for the decision; (v) prohibition of ex parte contacts during the consideration of a state application; (vi) conduct of a hearing in the state for which certification has been requested; and (vii) adversarial presentation and testing of evidence or information offered in support of a certification decision.

Commenters making this argument generally assumed that a chapter 154 certification is a ''rule'' for APA purposes. Even if this assumption were correct, it would provide no support for many of the procedures proposed by these commenters, because the APA requires trial-like proceedings only for rulemaking that is ''required by statute to be made on the record after opportunity for an agency hearing.'' 5 U.S.C. 553(c), 556–57. Chapter 154 does not require that certifications be made on the record or after a hearing.

A more basic problem with these commenters' argument is that a chapter 154 certification is not a rule as defined in the APA. A certification is not a ''statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4); see *Attorney General's Manual on the Administrative Procedure Act* 13–14 (1947) (Rules ''must be of *future effect*, implementing or prescribing future law * * *. Rule making is agency action which regulates the future conduct of either groups of persons or a single person; it is essentially legislative in nature, not only because it operates in the future but also because it is primarily concerned with policy considerations.''). A chapter 154 certification does not regulate future conduct and it is not based on policy considerations; rather, it is a determination that a state has satisfied certain existing requirements of federal law. See 28 U.S.C. 2265(a)(3). Thus, it is comparable to other determinations that are characterized as ''orders'' under the APA, such as licensing decisions. See 5 U.S.C. 551(6) (defining ''order'' to mean ''the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing''), 551(8) (defining ''license'' to include ''the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission''). There are other contexts in which the Attorney General or other executive officials are called on to make determinations whether state laws and policies satisfy federal statutory standards. See, *e.g.*, 42 U.S.C. 1973c (Voting Rights Act preclearance by Attorney General upon application by chief legal officer or other appropriate official of state or subdivision). Determinations of this type are not generally deemed to be ''rules'' under the APA.

Although the rulemaking procedures of 5 U.S.C. 553 are not applicable, they can be useful and can be voluntarily adopted. Section 26.23(c)–(d) in the rule incorporates the principal elements of APA rulemaking procedure: Publishing notice of the state's request for certification in the **Federal Register** and receipt of public comment. The **Federal Register** notice will include any statutes, regulations, rules, policies, and other authorities identified by the state in support of the request. The provision for public notice and comment in the rule reflects the view that obtaining such public input may help to ensure a fully informed decision by the Attorney General, but it is not required by the APA.

Because a chapter 154 certification is an ''order'' rather than a ''rule,'' the process for making such a certification is an ''adjudication.'' 5 U.S.C. 551(7) (defining ''adjudication'' to mean ''agency process for the formulation of an order''); see also *Attorney General's Manual on the Administrative Procedure Act*, supra, at 14–15 (''adjudication * * * may involve the determination of a person's right to benefits under existing law so that the issues relate to whether he is within the established category of persons entitled to such benefits''). The APA prescribes procedures for certain types of formal administrative adjudications, see 5 U.S.C. 554, which some commenters would apply to chapter 154 certification decisions. But these provisions apply only to ''adjudication required by statute to be determined on the record after opportunity for an agency hearing.'' 5 U.S.C. 554(a). Because chapter 154 does not require that certifications be determined on the record after opportunity for an agency hearing, these APA provisions are inapplicable. Also, these APA provisions do not apply to decisions subject to de novo review by a court, 5

U.S.C. 554(a)(1), such as a chapter 154 certification, see 28 U.S.C. 2265(c)(3).

Some commenters with capital defense responsibilities suggested that their clients would be deprived of life without due process of law if they were executed following habeas corpus review under chapter 154. This argument is not convincing. Cf. *Felker* v. *Turpin*, 518 U.S. 651, 663–64 (1996) (upholding legislative reform in habeas corpus procedure and recognizing that ''judgments about the proper scope of the writ are normally for Congress to make'' [citation and internal quotation marks omitted]). Some commenters appeared to suggest or assume that capital convicts have a constitutionally protected liberty interest in the application of the habeas corpus procedures of chapter 153 of title 28 rather than those of chapter 154, and that the certification procedures in § 26.23 are inadequate to protect this interest, even with de novo judicial review under 28 U.S.C. 2265(c). Again, the argument is not convincing. Chapter 154 certification decisions will not require complex and controvertible factual determinations relating to the practical operation of state postconviction review. Rather, they will be based on examination of state laws and policies to determine whether they provide for the measures the chapter describes. See Part II.A above and Part III.B below. The rule's procedures are adequate to provide the information the Attorney General will need in making chapter 154 certification decisions.

There is also no adequate basis for concluding, as some commenters argued, that capital defendants must have the full panoply of rights in relation to chapter 154 certifications that parties have in litigation. Not all governmental determinations must be made through quasi-litigative procedures, including determinations whether state laws and policies conform to federal statutory requirements. See, *e.g.*, 42 U.S.C. 16925 (Attorney General to determine whether states and other jurisdictions have substantially implemented the national standards for sex offender registration and notification); 5 U.S.C. 554 (requiring formal administrative adjudication only for matters required by statute to be determined on the record after opportunity for an agency hearing, and excluding matters subject to de novo judicial determination and other specified matters.) Rather, less formal procedures like those provided in § 26.23(c)–(d) are often more conducive to prompt and accurate decision-making. These procedures may include such measures as requesting additional information from the applicant state and advising the applicant concerning remedial measures that would facilitate compliance. *See, e.g.*, 73 FR 38029, 38047 (July 2, 2008) (procedure for determining state compliance in national guidelines for sex offender registration and notification); 64 FR 572, 586 (Jan. 5, 1999) (similar provisions in guidelines for predecessor sex offender registration and notification law). The commenters give no persuasive reason to depart from this approach in chapter 154 certification decisions.

A few procedural suggestions in the comments merit additional discussion:

One is that the rule further specify the showing a state must make to be eligible for certification. Comments of this type might be taken as proposing that the rule specify in greater detail the type or amount of supporting information that states must submit. But such specifications do not appear in chapter 154 itself and they are not necessary for the Attorney General to carry out his certification functions under the chapter. It is preferable to allow states to submit whatever information they wish in support of a certification request, just as all other persons will be permitted to submit whatever information they wish in support of or in opposition to a certification request. It is obviously in the interest of all concerned entities to submit whatever relevant information they can muster in support of the disposition they favor, and allowing them to do so will help to ensure that the Attorney General has the basis for a fully informed decision.

Alternatively, comments of this type may suggest that states should be required to establish that they have implemented qualifying capital counsel standards in a particular way, such as through statutory provisions or through procedural rules adopted by the state supreme court. But again, ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' 28 U.S.C. 2265(a)(3). There were originally provisions in chapter 154 describing in what form and by what entities qualifying capital counsel mechanisms and standards were to be adopted, but the 2006 amendments to chapter 154 eliminated these provisions. See 28 U.S.C. 2261, 2265; 152 Cong. Rec. S1624–25 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl) (explaining problem under prior statutes illustrated by adverse decision concerning California's qualification and need for reform to afford states flexibility concerning establishment of capital counsel mechanisms). Hence, in making certification decisions under chapter 154, the Attorney General is not limited to examining particular types of rules or enactments, but rather may take into account all articulations of relevant state policy, regardless of form.

Finally, some comments proposed that the rule include a minimum period of time, such as at least 90 days, for comment on a requested chapter 154 certification. It is unnecessary to include such a specification in the rule. Section 26.23(c) provides for notice of a requested certification through **Federal Register** publication, and the time period for public comment will be included in such notices in the normal manner.

B. Continuing Oversight and Decertification

Some commenters maintained that the Attorney General must provide for ongoing monitoring or oversight of the postconviction capital counsel systems of states that have received chapter 154 certification, and must decertify states whose performance in this area is found to be wanting. Some argued that, in the absence of such oversight, states could simply ignore the requirements relating to postconviction capital counsel in their own laws and rules. No changes have been made in the rule based on these comments because they misunderstand chapter 154 and conflate the functions that chapter 154 assigns to the Attorney General with those it leaves to the courts.

Chapter 154 sets two requirements for its applicability. The first requirement is that the Attorney General certify that the state has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265. 28 U.S.C. 2261(b)(1). Section 2265 provides that the state must have ''established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel'' for indigents in state capital postconviction proceedings, and that the state must ''provide[] standards of competency for the appointment of counsel'' in such proceedings. A qualifying capital counsel mechanism also must provide for judicial orders appointing counsel or declining to do so based on waiver or non-indigency (section 2261(c)) and for replacement or continuation of counsel at different stages of a capital case in conformity with certain requirements (section 2261(d)). These provisions do not assign any function to the Attorney General beyond examining state laws and policies to determine whether they provide for these measures.

The second requirement for chapter 154's applicability is that ''counsel was

appointed pursuant to th[e] mechanism [certified by the Attorney General], petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.'' 28 U.S.C. 2261(b)(2). This paragraph differs from section 2261(b)(1) in that it does not assign any function to ''the Attorney General of the United States.'' Rather, it is addressed to the federal court to which a capital convict presents a habeas corpus petition. Hence, even if the Attorney General has certified a state, chapter 154 will not apply (absent waiver or a finding of non-indigency in the state proceedings) if the federal habeas court determines that counsel was not actually appointed for the convict pursuant to the certified mechanism.

Chapter 154 thus provides a tripartite division of responsibility: The Attorney General makes the general certification determination based on an examination of state laws and policies, but has no oversight role with respect to particular cases. Federal habeas courts verify that counsel was appointed pursuant to the state postconviction capital counsel mechanism in particular cases. Beyond that, administration of the state capital counsel system is left to the state. The legislative history confirms the division of responsibilities set forth in the statutes: ''Under new section 2265, the Attorney General of the United States will decide if a State has established a qualifying mechanism * * *. Once a State is certified as having a qualifying mechanism, chapter 154 applies to all cases in which counsel was appointed pursuant to that mechanism, and to cases where counsel was not appointed because the defendant waived counsel, retained his own, or had the means to retain his own. 'Pursuant' is intended to mean only that the State's qualifying mechanism was invoked to appoint counsel, not to empower the Federal courts to supervise the State courts' administration of their own appointment systems. Paragraph (a)(3) of new section 2265 forbids creation of additional requirements not expressly stated in the chapter * * *.'' 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl).

Nothing in chapter 154 supports the view of some commenters that the Attorney General must examine the operation of the state capital counsel mechanism in particular cases, and there is much to the contrary. The statutes require certification by the Attorney General, but say nothing about decertification. If some type of continuing oversight and potential decertification were contemplated, many questions would need to be resolved, including (1) how the Attorney General would receive information concerning the ongoing operation of the certified state capital counsel mechanism; (2) whether departures in particular cases from the prescribed capital counsel mechanism would deprive the states of expedited habeas review in those cases only, or in all cases; (3) what quantum of violations would be necessary to warrant global decertification; (4) whether or how the Attorney General would communicate needed remedial measures to the state; and (5) whether and how certification could be restored if deficiencies in the operation of the capital counsel mechanism were corrected. There is nothing about any of these matters in chapter 154.

The commenters' theory also conflicts with features of chapter 154 that presuppose a one-time certification. For example, section 2265(a)(2) states that ''[t]he date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.'' If decertification were also contemplated, one would expect the provision to say as well when a certification terminates. Likewise, section 2265(b) states that ''the Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).'' Had decertification been contemplated, one would also expect the provision to direct the Attorney General to implement a decertification procedure.

In sum, the rule has not been changed to provide for continuing oversight of the operation of certified state capital counsel mechanisms by the Attorney General, or for potential decertification of state counsel mechanisms, because that would be contrary to the statutes. The legislative history confirms the obvious import of the statutory language on this point: ''When section 507 was being finalized, I and others were presented with arguments that some mechanism should be created for 'decertifying' a State that has opted in to chapter 154 but that allegedly has fallen out of compliance with its standards. I ultimately concluded that such a mechanism was unnecessary, and that it would likely impose substantial litigation burdens on the opt-in States that would outweigh any justification for the further review * * *. [I]f such a means of post-opt-in review were created, it inevitably would be overused and abused * * *. I thought it best to create a system of one-time certification, with no avenues to challenge or attempt to repeal the State's continuing chapter-154 eligibility. The consequences of opting in to chapter 154 should not be perpetual litigation over the State's continuing eligibility. * * * Therefore, under section 507, once a State is certified for chapter 154, that certification is final. There is no provision for 'decertification' or 'compliance review' after the State has been made subject to chapter 154.'' 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl).

C. Effect of Changes in Capital Counsel Mechanisms

Some commenters criticized § 26.23(e) in the proposed rule, which provided in part that a certification would no longer apply if a state changed its capital counsel mechanism ''in a manner that may affect satisfaction of the requirements of § 26.22,'' but that ''the State may request a new certification by the Attorney General that the changed mechanism satisfies the requirements of § 26.22.'' Some comments argued that the certification should not cease to apply merely because the change might affect satisfaction of the chapter 154 requirements. Other comments noted potential problems resulting from the absence of any specification of who would determine whether a change in the capital counsel system might affect satisfaction of the requirements of § 26.22.

In response to these comments, § 26.23(e) has been changed in the final rule to delete the statement that certification will not apply to a changed capital counsel mechanism. As noted above, chapter 154 makes no provision for ''decertifying'' a state after it has received chapter 154 certification. See 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl). This might in theory make it superfluous to permit the Attorney General to recertify a state after it has changed its counsel mechanism, on the ground that the original certification remains good no matter what happens subsequently. But capital defendants and their counsel may not accept such an understanding of chapter 154, and they may argue in litigation that the chapter 154 federal habeas corpus review procedures should not be deemed applicable in their cases in light of changes or alleged changes in a state's certified capital counsel mechanism. If a state had no means in such a case to seek re-certification by the Attorney General, then the problem that Congress sought to eliminate through the 2006 amendments could recur—litigation of the adequacy of state capital counsel mechanisms in the very federal courts that are affected by the applicability of the expedited habeas procedures in

chapter 154. The final rule, like the proposed rule, accordingly provides that the state may seek recertification by the Attorney General in such circumstances.

IV. Other Matters

A. Regulatory Certifications

Regulatory Flexibility Act

Some comments, including some from private lawyers who accept appointments to represent capital defendants in federal habeas corpus review proceedings, took issue with the Regulatory Flexibility Act certification in the proposed rule that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Their main argument on this point was that the applicability of the 180-day time limit for federal habeas filing under 28 U.S.C. 2263 in cases subject to chapter 154 would so burden them as to drive them out of capital federal habeas corpus work. No change has been made with respect to the Regulatory Flexibility Act certification in the final rule because the claim of a significant economic impact on a substantial number of small entities is unconvincing.

Independent of chapter 154, a convict must file a habeas corpus application within a one-year period, normally running from the date the judgment becomes final. 28 U.S.C. 2244(d). The basic 180-day limitation period under 28 U.S.C. 2263(a) is shorter, but it is extendable by 30 days for cause, *Id.* section 2263(b)(3), and it is tolled during the pendency of a petition for certiorari to the Supreme Court filed at the conclusion of direct review, *Id.* section 2263(b)(1). So these commenters overstate the practical difference between the habeas filing time limit under chapter 154 and the time limit that otherwise applies.

Chapter 154 also includes incentives for states to upgrade the representation of capital defendants in state postconviction proceedings, which should be of benefit to counsel who subsequently represent them in federal habeas corpus proceedings, by promoting the adequate development and presentation of claims in the state proceedings. In addition, the chapter 154 procedures eliminate a number of burdens that defense counsel would otherwise bear. Where chapter 154 applies, the automatic stay provisions of 28 U.S.C. 2262 are available, reducing the need to engage in litigation over stays of execution. Moreover, 28 U.S.C. 2264 provides clearer and tighter rules concerning the range of cognizable claims in federal habeas corpus review under chapter 154, in comparison with the general federal habeas review standards. This will relieve federal habeas counsel in chapter 154 proceedings of the need to develop and present claims that might be cognizable under the more porous general habeas rules, but are not cognizable under the chapter 154 standards. See 152 Cong. Rec. S1627–28 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl) (explaining differences). Furthermore, under the chapter 154 procedures, federal habeas counsel will be relieved of the need to litigate questions concerning the exhaustion of state remedies, and of other litigative burdens incident to the movement of cases back and forth between the state courts and the federal courts that results from the exhaustion requirement of 28 U.S.C. 2254(b)–(c). This requirement does not apply to review under chapter 154. 28 U.S.C. 2264(b) (''Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.''); 152 Cong. Rec. S1626–27 (daily ed. Mar. 2, 2006) (remarks of Senator Kyl) (so explaining). In projecting a significant economic impact resulting from the application of certain features of the chapter 154 procedures, these commenters do not take account of offsetting reductions in the work required to prepare and litigate federal habeas petitions that would result from other features of these procedures.

Finally, the lawyers complaining of an adverse economic impact do not claim or show that other litigation or legal work they would engage in instead would be less lucrative, even if it were true that the implementation of chapter 154 would deter them from accepting capital habeas appointments. Considering all of the above, no substantial reason has been given for revisiting the Regulatory Flexibility Act certification and it is unchanged in the final rule.

Executive Order 13132—Federalism

Some commenters took issue with the certification in the proposed rule that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment, pursuant to Executive Order 13132. (The proposed rule included in this certification a mistaken reference to the predecessor Executive Order 12612, but current Executive Order 13132 was accurately referenced in the caption for the certification, and the certification was premised on the current version of that order.) The specific claim of these commenters is that the proposed rule did not include federalism assessment statements sufficient under section 6(b) and (c) of Executive Order 13132.

The requirements of section 6(b) and (c) of the Executive Order are limited to rules with ''federalism implications.'' This phrase means ''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.'' Exec. Order 13132 at § 1(a). But the certification in the proposed rule properly stated that the rule does not have such effects, noting that the rule only provides a framework for states that wish to qualify for the benefits of the expedited habeas corpus procedures of chapter 154.

Hence, the objection that the proposed rule did not include assessments sufficient to comply with section 6(b) and (c) of the Executive Order is not well founded. The certification accordingly has not been changed in the final rule, except for correcting the mistaken citation to Executive Order 12612.

Executive Order 12988—Civil Justice Reform

Some commenters objected to the certification that the proposed regulation met the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988, including the requirements that proposed regulations ''provide a clear legal standard for affected conduct rather than a general standard,'' *Id.* section 3(a)(3), and that proposed regulations, as appropriate, ''define[ ] key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items,'' *Id.* section 3(b)(2)(F).

The comments urging specificity in the rule, as directed by Executive Order 12988, are at odds with objections by the same commenters that the rule should not specify which state officials are appropriate state officials for seeking chapter 154 certification, an issue discussed in Part I.B of this summary above. In relation to other terms and concepts in chapter 154, the objection relating to clear legal standards and definitional specificity is merely a variation of the claim that the Attorney General should usurp definitional functions that chapter 154 reserves to the states (regarding counsel competency standards), or should violate the prohibition of 28 U.S.C. 2265(a)(3) against adding to the chapter's express requirements for certification in the guise of ''definition.'' These matters are fully discussed in Part II.A–B of this summary above.

Hence, the comments received provided no substantial reason to reconsider the certification relating to Executive Order 12988 and this certification has not been changed in the final rule.

B. Additional Comments

Other comments were received on the proposed rule, which variously expressed support for the rule and did not propose any changes; stated general opposition to the rule or chapter 154; or submitted comments proposing changes in the rule that were similar in character or purpose to the comments discussed above. No additional changes were made in the rule on the basis of these comments because they either proposed no changes or provided no persuasive reasons for the changes they proposed.

Section-by-Section Analysis

Section 26.20

Section 26.20 explains the rule's purpose to implement the certification procedure for chapter 154.

Section 26.21

Section 26.21 provides definitions for certain terms used in chapter 154 and the regulations. Under 28 U.S.C. 2265(a), a certification request must be made by ''an appropriate State official.'' Pursuant to the definition of this term in the rule, in most cases, that official will be the state attorney general. In those few states, however, where the state attorney general does not have responsibilities relating to federal habeas corpus litigation, the chief executive of the state will be considered the appropriate state official to make a submission on behalf of the state.

Section 26.21 defines ''State postconviction proceedings'' as ''collateral proceedings in state court, regardless of whether the state conducts such proceedings after or concurrently with direct state review.'' Collateral review normally takes place following the completion of direct review of the judgment, but some states have special procedures for capital cases in which collateral proceedings and direct review may take place concurrently. Formerly separate provisions for the application of chapter 154 in states with ''unitary review'' procedures (involving concurrent collateral and direct review) were replaced by the recent amendments with provisions that are worded broadly enough to permit chapter 154 certification for all states under uniform standards, regardless of their timing of collateral review vis-a-vis direct review. Compare current 28 U.S.C. 2261(b) and 2265, as amended by Public Law 109–177, section 507, 120 Stat. 250–51 (Mar. 9, 2006), with former 28 U.S.C. 2261(b) and 2265 (2000); see 152 Cong. Rec. S1620 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that the current provisions simplify the chapter 154 qualification standards, ''which obviates the need for separate standards for those States that make direct and collateral review into separate vehicles and those States with unitary procedures'').

The definition of ''State postconviction proceedings'' in the rule reflects the underlying objective of chapter 154 to provide expedited federal habeas corpus review in capital cases arising in states that have gone beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by extending the appointment of counsel to indigent capital defendants in state collateral proceedings. The provisions of chapter 154, as well as the relevant legislative history, reflect the understanding of ''postconviction proceedings'' as not encompassing all proceedings that occur after conviction (*e.g.*, sentencing proceedings, direct review), but rather as referring to collateral proceedings. See 28 U.S.C. 2261(e) (providing that ineffectiveness or incompetence of counsel during postconviction proceedings in a capital case cannot be a ground for relief in a federal habeas corpus proceeding); 28 U.S.C. 2263(a), (b)(2) (180-day time limit for Federal habeas filing under chapter 154 starts to run ''after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review'' subject to tolling ''from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition''); 152 Cong. Rec. S1620, 1624–25 (daily ed. Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that chapter 154 provides incentives for States to provide counsel in State postconviction proceedings, equated to collateral proceedings); 151 Cong. Rec. E2639–40 (daily ed. Dec. 14, 2005) (extension of remarks of Rep. Flake) (same understanding); see also, *e.g.*, *Murray* v. *Giarratano,* 492 U.S. 1 (1989) (equating postconviction and collateral proceedings).

Section 26.22

Section 26.22 sets out the requirements for certification that a state must meet to qualify for the application of chapter 154. These are the requirements in 28 U.S.C. 2261(c)–(d) and 2265(a)(1). With respect to each of the requirements, examples are provided in the text of mechanisms that would be deemed sufficient or, in some cases, insufficient to comply with the chapter. The examples given of qualifying mechanisms are illustrative and therefore do not preclude states with other mechanisms from meeting the requirements for certification.

Section 26.23

Section 26.23 sets out the mechanics of the certification process for states seeking to opt in to chapter 154.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. It provides only a framework for those states that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the U.S. Code. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

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

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides only a framework for those states that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1532).

List of Subjects in 28 CFR Part 26

Law enforcement officers, Prisoners.

■ Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 26—DEATH SENTENCES PROCEDURES

■ 1. The authority citation for part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

■ 2. The heading for part 26 is revised as set forth above.

■ 3. Sections 26.1 through 26.5 are designated as Subpart A and a new subpart heading is added to read as follows:

Subpart A—Implementation of Death Sentences in Federal Cases

■ 4. Part 26 is amended by adding at the end thereof the following new Subpart B to read as follows:

Subpart B—Certification Process for State Capital Counsel Systems

Sec.

§ 26.20 Purpose.

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a state has a mechanism for providing legal representation to indigent prisoners in state postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If certification is granted, sections 2262, 2263, 2264, and 2266 of chapter 154 of title 28 apply in relation to federal habeas corpus review of capital cases from the state. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

§ 26.21 Definitions.

For purposes of this part, the term—

Appropriate state official means the State Attorney General, except that, in a state in which the State Attorney General does not have responsibility for federal habeas corpus litigation, it means the Chief Executive thereof.

State postconviction proceedings means collateral proceedings in state court, regardless of whether the state conducts such proceedings after or concurrently with direct state review.

§ 26.22 Requirements.

A state meets the requirements for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines each of the following to be satisfied:

(a) The state has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in state postconviction proceedings. As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly request continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

Example 1. A state provides that attorneys in a public defender's office are to be appointed to represent indigent capital defendants in state postconviction proceedings in capital cases. The counsel appointment mechanism otherwise satisfies the requirements of 28 U.S.C. 2261(c) and (d). Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

Example 2. A state provides that in any capital case in which a defendant is found to be indigent, the court shall appoint counsel for state postconviction proceedings from a list of attorneys available to represent defendants in a manner consistent with 28 U.S.C. 2261(c) and (d). Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

Example 3. State law provides that local jurisdictions are to determine whether counsel is appointed for indigents in state postconviction proceedings in capital cases and not all jurisdictions provide for the appointment of such counsel. This mechanism would not satisfy the chapter 154 requirement relating to appointment of counsel.

(b) The state has established a mechanism for compensation of appointed counsel in state postconviction proceedings in capital cases.

Example 1. A state sets hourly rates and allowances for compensation of capital counsel, with judicial discretion to authorize additional compensation if necessary in particular cases. For example, state law may provide that capital counsel in state postconviction proceedings will be paid an hourly rate not to exceed $100 for up to 200 hours of work, and that these caps can be judicially waived if compensation would otherwise be unreasonable. Such a system would meet this requirement, as the state has established a mechanism to compensate counsel in state postconviction proceedings.

Example 2. A state provides that attorneys in a public defender's office are to be appointed to serve as counsel for indigent defendants in capital postconviction proceedings. The attorney's compensation is his or her regular salary provided by the public defender's office. Such a system would meet the requirement of establishing a mechanism to compensate counsel in state postconviction proceedings.

Example 3. A state appoints attorneys who serve on a volunteer basis as counsel for indigent defendants in all capital postconviction proceedings. There is no provision for compensation of appointed counsel by the state. Such a system would not meet the requirement regarding compensation of counsel.

(c) The state has established a mechanism for the payment of reasonable litigation expenses of appointed counsel in state postconviction proceedings in capital cases.

Example 1. A state may simply authorize the court to approve payment of reasonable litigation expenses. For example, state law may provide that the court shall order reimbursement of counsel for expenses if the expenses are reasonably necessary and reasonably incurred. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses.

Example 2. A state authorizes reimbursement of counsel for litigation expenses up to a set cap, but with allowance for judicial authorization to reimburse expenses above that level if necessary. This system would parallel the approach in postconviction proceedings in federal capital cases and in federal habeas corpus review of state capital cases under 18 U.S.C. 3599(a)(2), (f), (g)(2), which sets a presumptive cap of $7,500 but provides a procedure for judicial authorization of greater amounts. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses as required for certification under chapter 154.

Example 3. State law authorizes reimbursement of counsel for litigation expenses in capital postconviction proceedings up to $1000. There is no authorization for payment of litigation expenses above that set cap, even if the expenses are determined by the court to be reasonably necessary and reasonably

incurred. This mechanism would not satisfy the chapter 154 requirement regarding payment of reasonable litigation expenses.

(d) The state provides competency standards for the appointment of counsel representing indigent prisoners in capital cases in state postconviction proceedings.

Example 1. A state requires that postconviction counsel must have been a member of the state bar for at least five years and have at least three years of felony litigation experience. This standard is similar to that set by federal law for appointed counsel for indigent defendants in postconviction proceedings in federal capital cases, and in federal habeas corpus review of state capital cases, under 18 U.S.C. 3599(a)(2), (c). Because this state has adopted standards of competency, it meets this requirement.

Example 2. A state appoints counsel for indigent capital defendants in postconviction proceedings from a public defender's office. The appointed defender must be an attorney admitted to practice law in the state and must possess demonstrated experience in the litigation of capital cases. This state would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 3. A state law requires some combination of training and litigation experience. For example, state law might provide that in order to represent an indigent defendant in state postconviction proceedings in a capital case an attorney must—(1) Have attended at least twelve hours of training or educational programs on postconviction criminal litigation and the defense of capital cases; (2) have substantial felony trial experience; and (3) have participated as counsel or co-counsel in at least five appeals or postconviction review proceedings relating to violent felony convictions. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 4. State law allows any attorney licensed by the state bar to practice law to represent indigent capital defendants in postconviction proceedings. No effort is made to set further standards or guidelines for such representation. Such a mechanism would not meet the requirement of having established standards of competency for postconviction capital counsel.

§ 26.23 Certification process.

(a) An appropriate state official may request that the Attorney General determine whether the state meets the requirements for certification under § 26.22.

(b) The request shall include:

(1) An attestation by the submitting state official that he or she is the ''appropriate state official'' as defined in § 26.21; and

(2) An affirmation by the state that it has provided notice of its request for certification to the chief or presiding justice or judge of the state's highest court with jurisdiction over criminal matters.

(c) Upon receipt of a state's request for certification, the Attorney General will publish a notice in the **Federal Register**—

(1) Indicating that the state has requested certification;

(2) Listing any statutes, regulations, rules, policies, and other authorities identified by the state in support of the request; and

(3) Soliciting public comment on the request.

(d) The state's request will be reviewed by the Attorney General, who may, at any time, request supplementary information from the state or advise the state of any deficiencies that would need to be remedied in order to obtain certification. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (c) of this section. The certification will be published in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the state for certification was established.

(e) Upon certification by the Attorney General that a state meets the requirements of § 26.22, such certification is final and will not be reopened. Subsequent changes in a state's mechanism for providing legal representation to indigent prisoners in state postconviction proceedings in capital cases do not affect the validity of a prior certification or the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed during state postconviction proceedings in the case. However, a state may request a new certification by the Attorney General to resolve uncertainties concerning or meet challenges to the applicability of chapter 154 in relation to federal habeas corpus review of capital cases from the state based on changes or alleged changes in the state's capital counsel mechanism.

Dated: December 5, 2008.

Michael B. Mukasey,

Attorney General.

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BILLING CODE 4410–18–P

POSTAL SERVICE

39 CFR Part 912

Procedures To Adjudicate Claims for Personal Injury or Property Damage Arising Out of the Operation of the U.S. Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service's regulations concerning tort claims to clarify the procedure for amending claims, and to update mailing addresses.

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

FOR FURTHER INFORMATION CONTACT: Ruth A. Przybeck, Chief Counsel, National Tort Center, P.O. Box 66640, St. Louis, MO 63141–0640; telephone (314) 872–5120.

SUPPLEMENTARY INFORMATION: Amendment of part 912 is necessary to clarify the procedure in § 912.5 for amending claims, and to update mailing addresses. This rule is a change in agency rules of procedure that does not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for its adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 912

Administrative practice and procedure; Claims.

■ For the reasons set forth above, the Postal Service amends 39 CFR part 912 as follows:

PART 912—[AMENDED]

■ 1. The authority citation for part 912 continues to read as follows:

Authority: 28 U.S.C. 2671–2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

§ 912.4 [Amended]

■ 2. In § 912.4, remove the address ''P.O. Box 66640, St. Louis, MO 63166–6640'' and add ''P.O. Box 66640, St. Louis, MO 63141–0640'' in its place.

■ 3. In § 912.5, add paragraph (c) to read as follows:

§ 912.5 Administrative claim; when presented.

* * * * *

(c) Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Postal Service shall have six months in which to make final disposition of the claim as amended, and the claimant's

option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

§ 912.9 [Amended]

■ 4. Amend § 912.9 as follows:

■ a. In paragraph (b), remove the address ''P.O. Box 66640, St. Louis, MO 63166–6640'' and add ''P.O. Box 66640, St. Louis, MO 63141–0640'' in its place.

■ b. In paragraph (c), remove the address ''P.O. Box 66640, St. Louis, MO 63166–6640'' and add ''P.O. Box 66640, St. Louis, MO 63141–0640'' in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E8–29299 Filed 12–10–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–8750–4]

RIN 2020–AA46

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this final Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996 (DCIA), to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations. The Agency is required to review the civil monetary penalties under the statutes it administers at least once every four years and to adjust such penalties as necessary for inflation according to a formula specified in the DCIA. Table 1 of the regulations, which appears near the end of this rule, contains a list of all civil monetary penalty authorities under EPA-administered statutes and the applicable statutory amounts, as adjusted for inflation.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Special Litigation and Projects Division (2248A), Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties [1] (''civil penalties'' or ''penalties'') that can be imposed under the laws administered by that agency. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. EPA's initial adjustment to each statutory civil penalty amount was published in the **Federal Register** on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997. EPA's second and most recent adjustment to each civil penalty amount was published in the **Federal Register** on February 13, 2004 (69 FR 7121) and became effective on March 15, 2004 (''the 2004 Rule'').

This rule, specifically Table 1 in 40 CFR 19.4, adjusts in accordance with the DCIA the maximum and, in some cases, the minimum amount of each statutory civil penalty that may be imposed for violations of EPA-administered statutes and their implementing regulations. Table 1 identifies the applicable EPA-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision. This rule also clarifies that the adjusted penalty amounts in 40 CFR 19.4 are applicable to violations that occur after the effective date of this rule.

The formula provided by the DCIA for determining the cost-of-living adjustment to statutory civil penalties consists of a four-step process. The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index [2] for all urban consumers (CPI–U) for the month of June of the calendar year preceding the adjustment exceeds the CPI–U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted.[3] Accordingly, the inflation adjustment factor for the present adjustment equals the CPI–U for June 2007 (*i.e.*, June of the year preceding this year), divided by the CPI–U for June 2004. Given that the last adjustment was made and published on February 13, 2004, the inflation adjustment for most civil penalties set forth in this rule was calculated by comparing the CPI–U for June 2004 (189.7) with the CPI–U for June 2007 (208.352), resulting in an inflation adjustment factor of 9.83 percent. Certain civil penalties that had not been adjusted since the initial 1996 adjustment were adjusted by an inflation adjustment of 32.96 percent calculated comparing the CPI–U for June 1996 (156.7) with the CPI–U for June 2007 (208.352).

Once the inflation adjustment factor is determined, the second step is to multiply the inflation adjustment factor by the current civil penalty amount to calculate the raw inflation increase. The third step is to round this raw inflation increase according to the section 5(a) of the DCIA. The DCIA's rounding rules require that any increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. (*See* section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Once the inflation increase has been rounded pursuant to the DCIA, the fourth step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount.

For most civil penalties, the amount of the last adjusted civil penalty reflected in Table 1 of the 2004 Rule

[1] Section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, defines ''civil monetary penalty'' to mean ''any penalty, fine or other sanction that—(A)(i) is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law * * *.''

[2] Section 3 of the DCIA defines ''Consumer Price Index'' to mean ''the Consumer Price Index for all-urban consumers published by the Department of Labor.'' Interested parties may find the relevant Consumer Price Index, published by the Department of Labor's Bureau of Labor Statistics, on the Internet. To access this information, go to the CPI Home Page at: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[3] Section 5(b) of the DCIA requires that statutory civil penalties be adjusted to reflect ''the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.''

was multiplied by 9.83 percent (the inflation adjustment) and the resulting increase amount was rounded up or down according to the rounding requirements of the statute. In the case of statutory civil penalty amounts that are being adjusted for the first time, such inflation adjustments are capped at a 10 percent increase in accordance with section 31001(s)(2) of the DCIA. For example, because this rule adjusts for the first time the administrative and civil judicial penalty amounts provided pursuant to ''Title XIV—Certain Alaskan Cruise Ship Operations'' of the Consolidated Appropriations Act of 2001, 33 U.S.C. 1901 note, these civil penalties, once adjusted for inflation, are capped at 110 percent of the original penalty amounts, as enacted. Further, certain civil penalties that had not been adjusted since the initial 1996 adjustment were adjusted by an inflation adjustment of 32.96 percent calculated by comparing the CPI–U for June 1996 (156.7) with the CPI–U for June 2007 (208.352). The last column of Table 1 below reflects the inflation-adjusted civil penalties as of the effective date of this rule. Assuming there are no changes to the mandate imposed by the DCIA, EPA intends to readjust these amounts in the year 2012 and every four years thereafter.

Section 6 of the DCIA provides that ''any increase under [the DCIA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.'' (*See* section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Thus, the new inflation-adjusted civil penalty amounts may be applied only to violations that occur after the effective date of this rule.

II. Technical Revisions to 40 CFR Part 19—Adjustment to Civil Monetary Penalties for Inflation

After publication of the 2004 Rule, EPA identified errors in certain sections of the regulatory language. Many of these errors also occurred in EPA's initial adjustment on December 31, 1996 (61 FR 69360). Because these errors may prove misleading and are in need of clarification, with this rulemaking EPA is correcting the errors described below. The changes made through these corrections are all technical in nature and do not affect the substance of the rule.

A. Technical Revisions to Sections 19.1 and 19.4

EPA is revising Table 1 of section 19.4 to shorten the penalty description to refer only to the title of the statute. In addition, the Agency has added for clarity a column that delineates the statutory penalties, as enacted, before any inflation adjustments were made. Further, EPA is revising Table 1 to clarify that the penalties are effective ''after January 30, 1997 through March 15, 2004'' rather than using the term ''between January 31, 1997 and March 15, 2004.''

In addition, because a few of the statutory civil penalty amounts pursuant to statutes implemented by EPA are framed as the minimum penalty as opposed to the statutory maximum penalty that can be assessed for a particular violation, this rule revises sections 19.1 and 19.4 to remove references to a ''maximum'' civil monetary penalty.[4] Specifically, with this rule, EPA is revising section 19.1 to make clear that 40 CFR Part 19 applies to ''each statutory provision under the laws administered by [EPA] concerning the civil monetary penalties which may be assessed in either civil judicial or administrative proceedings.'' [5] Similarly, the rule revises the introductory text to Table 1 of section 19.4 to remove references to ''maximum'' penalty amounts to read as follows: ''[t]he adjusted statutory penalty provisions and their applicable amounts are set out in Table 1. The last column in the table provides the newly effective statutory civil penalty amounts.'' Finally, this rule revises the headings under Table 1 of section 19.4 to refer to ''penalties effective'' rather than ''new maximum penalty amount.''

B. Technical Correction of Statutory Maximum Penalty Amount Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The row of Table 1 of 19.4, which lists the statutory maximum penalty figures for section 14 of FIFRA, 7 U.S.C. 136l.(a)(2), incorrectly reflected a statutory maximum penalty of $1,000 for violations after January 30, 1997 through March 15, 2004, and $1,200 for violations after March 15, 2004 for subsequent offenses or violations. Although EPA should have adjusted the maximum civil penalty in the 1996 rule from $1,000 to $1,100 for violations after January 30, 1997 through March 15, 2004, this rule does not adjust the penalty amount from $1,000 to $1,100 for violations that occurred during that time period because to do so would be to increase penalties retroactively without fair notice to the public. With this rule, EPA is correcting the row of Table 1 related to the maximum statutory penalty amount under FIFRA section 14 from the amount of $1,200 to $1,100 for violations after March 15, 2004 through January 12, 2009 to prevent the assessment of penalties above the correct statutory maximum amount that should have been listed in Table 1 for that time period. The correct penalty amount of $1,100 for violations occurring after the effective date of this rule has also been listed. The Agency is not aware of any case in which EPA assessed a civil penalty in excess of the correct statutory maximum amount of $1,100 pursuant to section 14 of FIFRA.

C. Technical Correction of Statutory Maximum Penalty Amount Under the Toxic Substances Control Act (TSCA)

The row of Table 1 of 19.4, which lists the statutory maximum penalty figures for section 207 of TSCA, 15 U.S.C. 2647(g), incorrectly reflected a statutory maximum penalty of $5,000 for violations after January 30, 1997 through March 15, 2004, and $5,500 for violations after March 15, 2004 for subsequent offenses or violations. EPA should have adjusted TSCA section 207's the maximum civil penalty from $5,000 to $5,500 for violations after January 30, 1997 through March 15, 2004, and from $5,500 to $6,500 for violations after March 15, 2004 through January 12, 2009. In this rule, EPA has not revised Table 1 to increase the section 207 penalties for violations that may have occurred in the past to prevent retroactive application of the higher penalty without the public having received fair notice of the penalty increases. With this rule, EPA is adjusting the civil penalty to reflect the correct penalty amount of $7,500 for violations occurring after the effective date of this rule.

D. Technical Correction Related to Civil Penalty Authorities Under the Clean Water Act (CWA)

EPA discovered an error in Table 1 of 40 CFR 19.4 (hereinafter 19.4), in which section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. 1321(b)(6)(B)(i), was cited incorrectly as 33 U.S.C. 1321(b)(6)(B)(I). To correct this error, the Agency is revising Table 1 of 19.4 to reflect the correct citation.

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[4] For example, section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), provides for both a minimum and maximum civil penalty that can be assessed for the discharge of oil or hazardous substances where the violation was the result of gross negligence or willful misconduct.

[5] The term ''civil monetary penalty'' is defined under the DCIA to include both ''a specific monetary amount'' as well as a ''maximum amount'' provided by federal law. *See* section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.

E. Technical Revision Related to Civil Penalty Authorities Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

The row of Table 1 of 19.4 related to section 104B(d) of the MPRSA, 33 U.S.C. 1414b(d), is being revised to add a footnote that reads ''[n]ote that 33 U.S.C. 1414b(d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table 1. The amount set forth in this Table reflects an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.''

F. Technical Correction Related to Civil Penalty Authorities Under the Safe Drinking Water Act (SDWA)

The row of Table 1 of 19.4 related to section 1414(c) of the SDWA, 42 U.S.C. 300g–3(c), is being deleted because the enforcement of the public notice requirements under this subsection is accomplished under section 1414(b) of the SDWA, 42 U.S.C. 300g–3(b), or SDWA section 1414(g)(3)(A), 42 U.S.C. 300g–3(g)(3)(A).

G. Technical Correction of Statutory Maximum Penalty Amounts Under the Clean Air Act (CAA)

In the 2004 Rule, the row of Table 1 of 19.4, which listed the statutory maximum civil penalty figures for 42 U.S.C. 7524(a), incorrectly reflected a statutory maximum civil penalty of $32,500 for ''manufacturers or dealers'' for the manufacture or sale of defeat devices in violation of CAA section 203(a)(3)(B), 42 U.S.C. 7522(a)(3)(B). The correct penalty amount of $2,750 for that violation should have been listed as the same for any person, regardless of whether the violator is a manufacturer or dealer. With this rule, EPA is correcting Table 1 to reflect that the statutory maximum penalty for the manufacture or sale of defeat devices, in violation of CAA section 203(a)(3)(B), 42 U.S.C. 7522(a)(3)(B), is $2,750 for violations occurring after January 30, 1997 through March 15, 2004 and after March 15, 2004 through January 12, 2009. The Agency is not aware of any case in which EPA assessed a civil penalty in excess of the correct statutory amount of $2,750.

H. Clarification of the Effective Date

The DCIA provides that ''any increase under [the DCIA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.'' (*See* section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Accordingly, inflation-adjusted civil penalties may be applied only to violations that occur after the effective date of a rule implementing penalty adjustments pursuant to the DCIA. Today's rule clarifies the top of the fifth column of Table 1 of 19.4 to reflect that the maximum penalty amounts apply for violations occurring after March 15, 2004 (*i.e.*, after the March 15, 2004 effective date of the 2004 Rule), through January 12, 2009.

III. Technical Revisions to 40 CFR 27.3, Regulations Implementing the Program Fraud Civil Remedies Act

A. Technical Revisions to 40 CFR 27.3(a)(1)(iv)

EPA is amending 40 CFR 27.3(a)(1)(iv) to refer to the operative maximum civil penalty amount, as provided in 40 CFR 19.4, that may be imposed by EPA pursuant to section 3802(a)(1) of the Program Fraud Civil Remedies Act (Program Fraud Act), 31 U.S.C. 3802(a)(1). Through this technical amendment, 40 CFR 27.3(a)(1)(iv) will hereafter be revised to conform to the maximum civil penalty amount that can be assessed pursuant to the Program Fraud Act, as adjusted for inflation in accordance with the DCIA under 40 CFR 19.4. Because this technical revision affects only a change to conform 40 CFR 27.3(a)(1)(iv) to be consistent with 40 CFR 19.4, this change does not require notice and comment.

B. Technical Revisions to 40 CFR 27.3(b)(1)(ii)

EPA is amending 40 CFR 27.3(b)(1)(ii) to refer to the operative maximum civil penalty amount, as provided in 40 CFR 19.4, that may be imposed by EPA pursuant to section 3802(a)(2) of the Program Fraud Act, 31 U.S.C. 3802(a)(1). Through this technical amendment, 40 CFR 27.3(b)(1)(ii) will hereafter be revised to conform to the maximum civil penalty amount that can be assessed pursuant to the Program Fraud Act, as adjusted for inflation in accordance with the DCIA under 40 CFR 19.4. Because this technical revision affects only a change to conform 40 CFR 27.3(b)(1)(ii) to be consistent with 40 CFR 19.4, this change does not require notice and comment.

IV. Good Cause

Under 5 U.S.C. 553(b)(B), EPA finds that there is good cause to promulgate this rule without providing for further public comment. In its proposed rule published in the **Federal Register** on July 3, 2003 (68 FR 39882), EPA provided an opportunity for public comment on the inflation adjustment calculations and rounding rules that EPA has used in this final rule. The primary purpose of this final rule is merely to implement the statutory directive in the DCIA, as amended, to make periodic increases in civil penalty amounts by applying the adjustment formula established by the statute. Thus, because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable civil monetary penalties derived from applying the formula. Since there is no discretion under the DCIA in determining the correct figure, and EPA cannot vary the amount of the adjustment to reflect any views or suggestions provided by commenters, it would serve no purpose to provide an opportunity for public comment on this adjustment. Thus, further notice and public comment is unnecessary.

Further, EPA is making the technical revisions discussed above without notice and public comment. With regard to Table 1 of section 19.4, EPA is making technical revisions that do not change the substance of the rule but make Table 1 easier to read and amend in the future. For example, EPA is revising Table 1 to shorten the penalty description to refer only to the name of the statute. We have also added for clarity a column that delineates the statutory penalties, as enacted, before any inflation adjustments were made. In addition, this rule clarifies that that the penalties are effective ''after January 30, 1997 through March 15, 2004'' rather than using the term ''between January 31, 1997 and March 15, 2004.'' Finally, in sections 19.1 and 19.4, this rule removes references to ''maximum'' penalties because, in a few instances, EPA-administered statutes provide for both minimum as well as maximum civil penalty amounts. These are technical revisions that more accurately reflect the statutory provisions and do not constitute substantive revisions to the rule.

Similarly, the technical correction adjusting the penalty amount of section 14 of FIFRA, 7 U.S.C. 136*l*.(a)(2), to $1,100, does not require notice and public comment because this is the adjusted penalty amount that is required by the DCIA. The statute prescribes a formula that must be followed to determine the allowable statutory civil penalty amounts. The $1,000 and $1,200 figures included in the 2004 Rule did not comply with the statute. The incorrect penalty amount of $1,000 for

violations after January 30, 1997 through March 15, 2004 was not changed to prevent the assessment of penalties above the statutory maximum amount that was in effect during that time period. The incorrect penalty of $1,200 for violations after March 15, 2004 through January 12, 2009 was changed in Table 1 to prevent the assessment of penalties above the correct statutory maximum amount that should have been listed in Table 1 for that time period. The Agency is not aware of any case in which EPA assessed a civil penalty in excess of the correct statutory maximum civil penalty of $1,100 pursuant to section 14 of FIFRA.

With regard to the technical correction adjusting the penalty amount for section 207 of TSCA, 15 U.S.C. 2647(g), to $7,500, that adjustment can be made without notice and public comment because $7,500 is the adjusted penalty amount that is required by the DCIA. The statute prescribes a formula that must be followed to determine the statutory civil penalty amounts. The $5,000 and $5,500 figures included in the 2004 Rule did not comply with the DCIA. The incorrect penalty amounts have not been changed in the revised Table 1 to prevent the assessment of penalties above the statutory maximums that were in effect during those time periods. The correct statutory maximum penalties of $5,500 for violations after January 30, 1997 through March 15, 2004, and $6,500 for violations after March 15, 2004 through January 12, 2009 have not been listed in the revised Table 1 to prevent retroactive application of a higher penalty without the regulated community receiving fair notice of the increases. EPA's correction to the maximum penalties that can be imposed under the CAA section 205, 42 U.S.C. 7524(a), is also technical and not substantive in nature. By revising the penalty amount from $32,500 to $2,750, EPA is correcting the maximum penalty to be consistent with the adjusted penalty amount that is required by the DCIA. Notice and public comment on this technical correction is not necessary given that the DCIA prescribes a formula that must be followed to determine the civil penalty amounts and the $32,500 figure included in the 2004 Rule did not comply with the statute. Furthermore, EPA is not aware of any case in which the Agency assessed a civil penalty in excess of the correct statutory maximum penalty of $2,750 per violation of for violations of CAA section 203(a)(3)(B). In this rule, the correct penalty amount of $2,750 has been listed in Table 1 for violations occurring during both time periods after January 30, 1997 through March 15, 2004 and after March 15, 2004 through January 12, 2009 to prevent the assessment of penalties above the correct statutory maximum amount that should have been listed in Table 1 for those time periods.

EPA's revisions and corrections to Table 1 of section 19.4 related to the CWA, the MPRSA and the SDWA are also technical rather than substantive in nature and, hence, do not require notice and public comment. In the case of the CWA, this rule corrects an erroneous statutory citation. With regard to the MPRSA, this rule adds a footnote directing the public to the fact that section 104B(d) contains a penalty escalation provision that must be applied to the penalty amounts set forth in Table 1. In addition, this rule corrects Table 1 to delete a reference to section 1414(c) of the SDWA, 42 U.S.C. 300g–3(c), because this subsection governs public notice requirements for public water systems rather than civil penalty authorities under the SDWA. These changes either correct errors in prior rules or, in the case of the MPRSA, refer back to the provisions of that statute. Accordingly, these changes do not require notice and comment.

EPA is amending the regulations implementing the Program Fraud Act, 40 CFR 27.3(a)(1)(iv) and 40 CFR 27.3(b)(1)(ii), to refer to 40 CFR 19.4 so that hereafter 40 CFR 27.3(a)(1)(iv) and 40 CFR 27.3(b)(1)(ii) will conform to the civil penalty inflation adjustments made in accordance with the DCIA to the maximum civil penalty amounts that can be assessed by EPA pursuant to the Program Fraud Act, 31 U.S.C. 3802(a). Because these technical revisions affect only changes to conform 40 CFR 27.3(a)(1)(iv) and 40 CFR 27.3(b)(1)(ii) to be consistent with 40 CFR 19.4, these changes do not require notice and comment.

As required by the DCIA, this rule addresses only inflation adjustments to statutory civil penalty amounts under the statutes identified in Table 1 of 40 CFR 19.4. The technical corrections ensure consistency with the language of the statutes administered by EPA and correct errors in certain formula-driven civil penalty amounts, in accordance with the DCIA. This rule does not address the discretion to impose or not to impose a penalty, nor the procedures that must be followed in initiating an administrative or civil judicial enforcement action involving the assessment of civil penalties. Thus, EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, is not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* ''Burden'' is defined at 5 CFR 1320.3(b). Because this rule does not contain a collection of information, no control number is necessary.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Although this rule is subject to the APA, the Agency has made a ''good cause'' finding that this rule is not subject to the APA's notice and comment requirements (*see* Section IV of this notice). Because this rule is not subject to notice and comment rulemaking requirements under the APA or any other statute, this rule is not subject to the regulatory flexibility provisions of the RFA.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, establishes the requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This action contains no federal mandates under the provisions of Title II of UMRA for state, local, or tribal governments or the private sector. By applying the adjustment formula and rounding rules prescribed by the DCIA, this rule adjusts for inflation the statutory maximum and, in some cases, the minimum, amount of civil penalties that can be assessed by EPA, in an administrative enforcement action, or by the U.S Attorney General, in a civil judicial case, for violations of EPA-administered statutes and their implementing regulations. Because the

calculation of any increase is formula-driven, EPA has no policy discretion to vary the amount of the adjustment. Given that the Agency has made a ''good cause'' finding that this rule is not subject to notice and comment requirements under the APA or any other statute (*see* Section IV of this notice), it is not subject to sections 202 and 205 of UMRA. EPA has also determined that this action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule merely increases the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled *Federalism,* 64 FR 43255 (August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The term ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments,* 65 FR 67249 (November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' As this final rule will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* 66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898, 59 FR 7629 (February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this final rulemaking. The primary purpose of this final rule is merely to apply the DCIA's inflation adjustment formula to make periodic increases in the civil penalties that may be imposed for violations of EPA-administered statutes and their implementing regulations. Thus, because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula. Since there is no discretion under the DCIA in determining the statutory civil penalty amount, EPA cannot vary the amount of the civil penalty adjustment to address other issues, including environmental justice issues.

K. Congressional Review Act

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

List of Subjects

40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

40 CFR Part 27

Administrative practice and procedure, Assessments, False Claims, False Statements, Penalties.

Dated: December 4, 2008.

Stephen L. Johnson,

Administrator, Environmental Protection Agency.

■ For the reasons set out in the preamble, title 40, chapter I of the Code

of Federal Regulations is amended as follows:

■ 1. Revise part 19 to read as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.
19.1 Applicability.
19.2 Effective date.
19.3 [Reserved].
19.4 Penalty adjustment and table.

Authority: Public Law 101–410, 28 U.S.C. 2461 note; Public Law 104–134, 31 U.S.C. 3701 note.

§ 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the civil monetary penalties which may be assessed in either civil judicial or administrative proceedings.

§ 19.2 Effective date.

The increased penalty amounts set forth in the last column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations which occur after January 12, 2009. The penalty amounts that were adjusted in EPA's initial adjustment to each statutory civil penalty amount that was published in the **Federal Register** on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997, apply to all violations under the applicable statutes and regulations which occurred after January 30, 1997, through March 15, 2004. The penalty amounts that were adjusted in EPA's second adjustment to each statutory civil penalty amount that was published in the **Federal Register** on February 13, 2004 (69 FR 7121), and became effective on March 15, 2004, apply to all violations under the applicable statutes and regulations which occurred after March 15, 2004, through January 12, 2009.

§ 19.3 [Reserved]

§ 19.4 Penalty adjustment and table.

The adjusted statutory penalty provisions and their applicable amounts are set out in Table 1. The last column in the table provides the newly effective statutory civil penalty amounts.

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009
7 U.S.C. 136*l*.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CIVIL (FIFRA).	$5,000	$5,500	$6,500	$7,500
7 U.S.C. 136*l*.(a)(2)	FIFRA	$500/1,000	$550/1,000	$650/1,100	$750/1,100
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	$25,000	$27,500	$32,500	$37,500
15 U.S.C. 2647(a)	TSCA	$5,000	$5,500	$6,500	$7,500
15 U.S.C. 2647(g)	TSCA	$5,000	$5,000	$5,500	$7,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	$5,000	$5,500	$6,500	$7,500
31 U.S.C. 3802(a)(2)	PFCRA	$5,000	$5,500	$6,500	$7,500
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	$25,000	$27,500	$32,500	$37,500
33 U.S.C. 1319(g)(2)(A)	CWA	$10,000/25,000	$11,000/27,500	$11,000/32,500	$16,000/37,500
33 U.S.C. 1319(g)(2)(B)	CWA	$10,000/125,000	$11,000/137,500	$11,000/157,500	$16,000/177,500
33 U.S.C. 1321(b)(6)(B)(i)	CWA	$10,000/25,000	$11,000/27,500	$11,000/32,500	$16,000/37,500
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	$10,000/125,000	$11,000/137,500	$11,000/157,500	$16,000/177,500
33 U.S.C. 1321(b)(7)(A)	CWA	$25,000/1,000	$27,500/1,100	$32,500/1,100	$37,500/1,100
33 U.S.C. 1321(b)(7)(B)	CWA	$25,000	$27,500	$32,500	$37,500
33 U.S.C. 1321(b)(7)(C)	CWA	$25,000	$27,500	$32,500	$37,500
33 U.S.C. 1321(b)(7)(D)	CWA	$100,000/3,000	$110,000/3,300	$130,000/4,300	$140,000/4,300
33 U.S.C. 1415(a)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	$50,000/125,000	$55,000/137,500	$65,000/157,500	$70,000/177,500
33 U.S.C. 1414b(d)(1)[1]	MPRSA	$600	$660	$760	$860
33 U.S.C. 1901 note (*see* 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	$10,000/25,000	$10,000/25,000[2]	$10,000/25,000	$11,000/27,500
33 U.S.C. 1901 note (*see* 1409(a)(2)(B)).	CACSO	$10,000/125,000	$10,000/125,000	$10,000/125,000	$11,000/137,500
33 U.S.C. 1901 note (*see* 1409(b)(1)).	CACSO	$25,000	$25,000	$25,000	$27,500
42 U.S.C. 300h–2(b)(1)	SDWA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 300h–2(c)(1)	SDWA	$10,000/125,000	$11,000/137,500	$11,000/157,500	$16,000/177,500
42 U.S.C. 300h–2(c)(2)	SDWA	$5,000/125,000	$5,500/137,500	$6,500/157,500	$7,500/177,500
42 U.S.C. 300h–3(c)	SDWA	$5,000/10,000	$5,500/11,000	$6,500/11,000	$7,500/16,000
42 U.S.C. 300i(b)	SDWA	$15,000	$15,000	$16,500	$16,500
42 U.S.C. 300i–1(c)	SDWA	$20,000/50,000	$22,000/55,000[3]	$100,000/1,000,000	$110,000/1,100,000
42 U.S.C. 300j(e)(2)	SDWA	$2,500	$2,750	$2,750	$3,750
42 U.S.C. 300j–4(c)	SDWA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 300j–6(b)(2)	SDWA	$25,000	$25,000	$27,500	$32,500
42 U.S.C. 300j–23(d)	SDWA	$5,000/50,000	$5,500/55,000	$6,500/65,000	$7,500/70,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD–BASED PAINT HAZARD REDUCTION ACT OF 1992.	$10,000	$11,000	$11,000	$16,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	$10,000	$11,000	$11,000	$16,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 6928(c)	RCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 6928(g)	RCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 6928(h)(2)	RCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 6934(e)	RCRA	$5,000	$5,500	$6,500	$7,500
42 U.S.C. 6973(b)	RCRA	$5,000	$5,500	$6,500	$7,500
42 U.S.C. 6991e(a)(3)	RCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 6991e(d)(1)	RCRA	$10,000	$11,000	$11,000	$16,000

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009
42 U.S.C. 6991e(d)(2)	RCRA	$10,000	$11,000	$11,000	$16,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 7413(d)(1)	CAA	$25,000/200,000	$27,500/220,000	$32,500/270,000	$37,500/295,000
42 U.S.C. 7413(d)(3)	CAA	$5,000	$5,500	$6,500	$7,500
42 U.S.C. 7524(a)	CAA	$2,500/25,000	$2,750/27,500	$2,750/32,500	$3,750/37,500
42 U.S.C. 7524(c)(1)	CAA	$200,000	$220,000	$270,000	$295,000
42 U.S.C. 7545(d)(1)	CAA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 9606(b)(1)	CERCLA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 9609(a)(1)	CERCLA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 9609(b)	CERCLA	$25,000/75,000	$27,500/82,500	$32,500/97,500	$37,500/107,500
42 U.S.C. 9609(c)	CERCLA	$25,000/75,000	$27,500/82,500	$32,500/97,500	$37,500/107,500
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT–TO–KNOW ACT (EPCRA).	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 11045(b)	EPCRA	$25,000/75,000	$27,500/82,500	$32,500/97,500	$37,500/107,500
42 U.S.C. 11045(c)(1)	EPCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 11045(c)(2)	EPCRA	$10,000	$11,000	$11,000	$16,000
42 U.S.C. 11045(d)(1)	EPCRA	$25,000	$27,500	$32,500	$37,500
42 U.S.C. 14304(a)(1)	MERCURY–CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	$10,000	$10,000	$11,000	$16,000
42 U.S.C. 14304(g)	BATTERY ACT	$10,000	$10,000	$11,000	$16,000

[1] Note that 33 U.S.C. 1414b(d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table 1. The amounts set forth in this Table reflect an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.

[2] CACSO was passed on December 21, 2000 as part of Title XIV of the Consolidated Appropriations Act of 2001, Public Law 106–554, 33 U.S.C. 1901 note.

[3] The original statutory penalty amounts of 20,000 and 50,000 under section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. 300i–1(c), were subsequently increased by Congress pursuant to section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188 (June 12, 2002), to 100,000 and 1,000,000, respectively. EPA did not adjust these new penalty amounts in its 2004 Civil Monetary Penalty Inflation Adjustment Rule (''2004 Rule''), 69 FR 7121 (February 13, 2004), because they had gone into effect less than two years prior to the 2004 Rule.

PART 27—[AMENDED]

■ 2. The authority citation for Part 27 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Public Law 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

■ 3. Section 27.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 27.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than the operative effective statutory maximum amount, as provided in 40 CFR 19.4,[1] for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than the operative effective statutory maximum amount, as provided in 40 CFR 19.4,[2] for each such statement.

* * * * *

[FR Doc. E8–29380 Filed 12–10–08; 8:45 am]

BILLING CODE 6560–50–P

[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

[2] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2008–0569 FRL–8750–5]

RIN 2050–AG48

Oil Pollution Prevention; Spill Prevention, Control and Countermeasures Rule; Revisions to the Regulatory Definition of ''Navigable Waters''

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: This document makes a correction to the Preamble of the final rule amending the Oil Pollution Prevention regulation published on November 26, 2008 (73 FR 71941). The final rule announced the vacatur of the July 17, 2002 revisions to the Clean Water Act section 311 regulatory definition of ''navigable waters'' in accordance with an order, issued by the United States District Court for the District of Columbia (D.D.C.) in

American Petroleum Institute v. Johnson, 541 F.Supp.2d 165 (D.D.C. 2008), invalidating those revisions and restoring the regulatory definition of ''navigable waters'' promulgated by EPA in 1973. The final rule amended the definition of ''navigable waters'' in part 112 to comply with that decision.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 800–424–9346 or TDD at 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 703–412–9810 or TDD 703–412–3323. For more detailed information, contact Hugo Paul Fleischman of EPA at 202–564–1968, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460–0002, Mail Code 5104A.

Correction

The Preamble of the final rule E8–28123 published on November 26, 2008, beginning on page 71941 is corrected as follows:

1. On page 71941, second column, under the heading ''Summary'', the citation for *American Petroleum Institute* v. *Johnson* is corrected to read ''541 F.Supp.2d 165'' instead of ''571 F.Supp.2d 165''.

2. On page 71942, third column, first paragraph, the citation for *American Petroleum Institute* v. *Johnson* is corrected to read ''541 F.Supp.2d 165'' instead of ''571 F.Supp.2d 165''.

Dated: December 4, 2008.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E8–29379 Filed 12–10–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

RIN 1006–AA55

Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule reissues 43 CFR part 423 in its entirety. Amendments to 43 CFR part 423 were published in the **Federal Register** on September 24, 2008, (73 FR 54977) as an interim final rule. This final rule contains only minor additional changes which we are making in response to the public comments received on the September 24, 2008 interim final rule.

DATES: This final rule is effective on January 12, 2009.

FOR FURTHER INFORMATION CONTACT: David Achterberg, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, PO Box 25007, Denver, Colorado, 80225, telephone 303–445–3736.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2001, Congress enacted Public Law 107–69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to ''issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.'' The Secretary of the Interior delegated this authority to the Commissioner of Reclamation.

On April 17, 2002, Reclamation published 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects (67 FR 19092, Apr.17, 2002) as an interim final rule. In the preamble to that rule, Reclamation stated its intent to replace the interim final rule with a more comprehensive public conduct rule and set April 17, 2003, as the interim final rule's expiration date. In order to provide more time to develop the comprehensive public conduct rule, Reclamation later extended the expiration of the interim final rule to April 17, 2005 (68 FR 16214, Apr. 3, 2003), and again to April 17, 2006 (70 FR 15778, Mar. 29, 2005).

On September 13, 2005, Reclamation published a proposed public conduct rule (70 FR 54214, Sep. 13, 2005) and asked the public to comment on that proposed rule. The Final Rule, 43 CFR part 423, was published in the **Federal Register** on April 17, 2006 (71 FR 19790, Apr. 17, 2006).

On September 24, 2008, Reclamation published an interim final public conduct rule (73 FR 54977, Sep. 24, 2008) that made minor amendments to the existing part 423, and asked the public to comment on that rule. In response to those public comments, this final rule makes minor changes to the interim final rule.

In this publication, we are reprinting 43 CFR part 423 in its entirety with the amendments made in the September 24, 2008, interim final rule, as well as the changes made as a result of comments we received during the public comment period which ended on November 24, 2008, so interested parties can view the rule as a cohesive document.

II. Summary of Comments and Responses

This section of the preamble provides responses to the comments received on the interim final rule published in the **Federal Register** on September 24, 2008 (73 FR 54977). Nine parties submitted comments during the 60-day public comment period which ended on November 24, 2008.

Comments and Responses

Comment: Several commenters were concerned about the changes we made to the effect that a seaplane is not considered a vessel under part 423.

Response: The question of whether seaplanes are considered ''vessels'' when on the water is essentially not material to whether seaplane activity is allowed or not allowed on any particular reservoir. The applicable rules of other entities such as the United States Coast Guard, the National Park Service, the States, and/or local governments remain in effect and must be observed. This includes other entities' rules concerning the definition of ''vessel,'' and pilots must be aware of all applicable Federal, State and local laws and regulations when contemplating landings on Reclamation lands or waterbodies.

Due to the fact that the other entities that have varying degrees of jurisdiction over Reclamation waterbodies differ in how they define the term ''vessel,'' we added the sentence ''A seaplane may be considered a vessel'' to the definition of ''vessel'' in section 423.2 of this final rule. We also revised section 438(a) by adding the words ''or seaplane'' after the word ''watercraft,'' and we added the words ''other watercraft, or seaplane'' after the word ''vessel'' in section 438(b).

Comment: Several commenters expressed concern or disagreement regarding the status of particular Reclamation reservoirs or groups of reservoirs with respect to seaplane activity, difficulties in determining that status, and the allowance of seaplane activity in general.

Response: This rule does not determine the status of any particular reservoir or set of reservoirs with respect to seaplane activity. One of the purposes of the amendments made on September 24, 2008, was to recognize the aircraft-related laws and rules of other Federal, State, and local entities that have jurisdiction over the surface

waters of many Reclamation reservoirs. Reclamation believes that in general, decisions to allow, restrict, or prohibit aircraft on Reclamation lands and waterbodies should be made at the local level and/or by the Federal, State, and local entities that have jurisdiction. However, Reclamation reserves the authority to intervene when necessary for reasons including, but not limited to, safety, security, law enforcement, and reservoir operations.

Reclamation will continue to provide the status of the reservoirs we manage, but pilots ultimately bear the responsibility for determining the status of reservoirs under the jurisdiction of our managing partners and/or other entities.

Comment: One commenter expressed concern over the use of the term ''local government'' in section 423(b)(2). The commenter believed this term might be interpreted to exclude employees of water districts and other political subdivisions, thus making them subject to this rule when carrying out their regular duties on Reclamation projects.

Response: Reclamation agrees with this comment and we added the phrase ''or other political subdivision'' after the words ''local government'' in section 423(b)(2).

Summary of Changes

As discussed in the ''Comments and Responses'' section above, the changes we are making to the interim final rule published September 24, 2008 are:

1. Adding a sentence ''A seaplane may be considered a vessel'' to the definition of ''vessel'' in section 423.2.
2. Adding the words ''or other political subdivision'' after the words ''local government'' in section 423(b)(2).
3. Adding the words ''or seaplane'' after the word ''watercraft.'' in section 438(a).
4. Adding the words ''other watercraft, or seaplane'' after the word ''vessel'' in section 438(b).

III. Procedural Requirements

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. This rule makes only minor changes to 43 CFR part 423.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). This rule makes only minor changes to 43 CFR part 423.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule makes only minor changes to 43 CFR part 423. The rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 423. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 423. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule makes only minor changes to 43 CFR part 423. A Federalism Assessment is not required.

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

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

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

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule recognizes tribal authorities, laws, and regulations but does not affect them.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

11. Data Quality Act

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

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

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

13. Clarity of This Regulation

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, and Reclamation projects.

Dated: December 2, 2008.

Kameran L. Onley,

Acting Assistant Secretary—Water and Science.

■ For the reasons stated in the preamble, 43 CFR part 423 is revised to read as follows:

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES

Subpart A—Purpose, Definitions, and Applicability

Subpart B—Areas Open and Closed to Public Use

Subpart C—Rules of Conduct

Subpart D—Authorization of Otherwise Prohibited Activities

Subpart E—Special Use Areas

Subpart F—Violations and Sanctions

Authority: Public Law 107–69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102–575, Title XXVIII (October 30, 1992) (16 U.S.C. 460l–31 through 34); Public Law 89–72 (July 9, 1965) (16 U.S.C. 460l–12); Public Law 106–206 (May 26, 2000) (16 U.S.C. 460l–6d); Public Law 59–209 (June 8, 1906) (16 U.S.C. 431–433); Public Law 96–95 (October 31, 1979) (16 U.S.C. 470aa–mm).

Subpart A—Purpose, Definitions, and Applicability

§ 423.1 Purpose.

The purpose of this part is to maintain law and order and protect persons and property within Reclamation projects and on Reclamation facilities, lands, and waterbodies.

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight, unless a particular section indicates otherwise.

Archaeological resource means any material remains of past human life or activities which are of archaeological interest, as determined under 43 CFR part 7, including, but not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion of any of the foregoing items. Archaeological resources are a component of cultural resources.

Authorized official means the Commissioner of the Bureau of Reclamation and those Federal, State, local, and tribal officials, and agencies to which the Commissioner has delegated specific and limited authorities to enforce and implement this part 423.

Camping means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or apparent purpose of overnight occupancy.

Closed means a prohibition to all public access.

Cultural resource means any man-made or associated prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Explosive means any device or substance that can be ignited or detonated to produce a violent burst of gas and/or other materials, including, but not limited to, blasting caps and detonatable fireworks and pyrotechnics. This definition does not include fuel and ammunition when properly transported and used.

Firearm means a device that expels a projectile such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means.

Fishing means taking or attempting to take, by any means, any fish, mollusk, or crustacean found in fresh or salt water.

Geophysical discovery device means any mechanism, tool, or equipment including, but not limited to, metal detectors and radar devices, that can be used to detect or probe for objects beneath land or water surfaces.

Historic property means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.

Hunting means taking or attempting to take wildlife by any means, except by trapping or fishing.

Museum property means personal property acquired according to some rational scheme and preserved, studied, or interpreted for public benefit, including, but not limited to, objects selected to represent archaeology, art, ethnography, history, documents, botany, paleontology, geology, and environmental samples.

Natural resources means assets or values related to the natural world, including, but not limited to, plants, animals, water, air, soils, minerals, geologic features and formations, fossils and other paleontological resources, scenic values, etc. Natural resources are those elements of the environment not created by humans.

Off-road vehicle means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

(1) Nonamphibious registered motorboats;

(2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;

(3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;

(4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;

(5) Any combat or combat support vehicle when used in times of national defense emergencies;

(6) ''Official use'' vehicles; and

(7) Wheelchairs and carts designed and used for transporting persons with disabilities.

Operator means a person who operates, drives, controls, has charge of, or is in actual physical control of any mode of transportation or other equipment.

Permit means any written document issued by an authorized official pursuant to Subpart D of this part 423 authorizing a particular activity with specified time limits, locations, and/or other conditions.

Person means an individual, entity, or organization.

Pet means a domesticated animal other than livestock. (''Livestock'' is any hoofed animal used for agricultural, riding, pulling, or packing purposes.)

Public use limit means any limitation on public uses or activities established by law or regulation.

Real property means any legal interest in land and the water, oil, gas, and minerals in, on, and beneath the land surface, together with the improvements, structures, and fixtures located thereon.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facilities, lands, and waterbodies means Reclamation facilities, Reclamation lands, and Reclamation waterbodies.

Reclamation facility means any facility constructed or acquired under Federal reclamation law that is situated on Reclamation lands and is used or occupied by Reclamation under a lease, easement, right-of-way, license, contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: dams, powerplants, buildings, switchyards, transmission lines, recreation facilities, fish and wildlife facilities, pumping plants, and warehouses.

Reclamation lands means any real property under the jurisdiction of or administered by Reclamation, and includes, but is not limited to, all acquired and withdrawn lands and lands in which Reclamation has a lease interest, easement, or right-of-way.

Reclamation project means any water supply, water delivery, flood control, or hydropower project, together with any associated facilities for fish, wildlife, recreation, or water treatment constructed or administered by Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371 *et seq.*), and Acts supplementary thereto and amendatory thereof).

Reclamation waterbody means any body of water situated on Reclamation lands or under Reclamation jurisdiction.

Refuse means any human or pet waste, litter, trash, garbage, rubbish, debris, contaminant, pollutant, waste liquid, or other discarded materials.

Sacred site means any specific, discrete, or narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the land managing agency of the existence of such a site.

Special use area means an area at or within a Reclamation facility, or an area of Reclamation lands or waterbodies, in which special rules for public conduct apply that may differ from those established in Subpart C of this part 423. A special use area must be established by an authorized official as provided in Subpart E of this part 423.

State and local laws means the laws, statutes, regulations, ordinances, codes, and court decisions of a State and of the counties, municipalities, or other governmental entities which are enabled by statute and vested with legislative authority.

Traditional cultural property means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that:

(1) Are rooted in that community's history; and

(2) Are important in maintaining the continuing cultural identity of the community.

Trapping means taking, or attempting to take, wildlife with a snare, trap, mesh, wire, or other implement, object, or mechanical device designed to entrap, ensnare, or kill animals, including fish.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, whether moved by mechanical, animal, or human power, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, trailers, campers, bicycles, and those used exclusively upon stationary rails or tracks; except wheelchairs used by persons with disabilities.

Vessel means any craft that is used or capable of being used as a means of transportation on or under water or ice, including, but not limited to, powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, ice yachts, or personal watercraft. Inner tubes, air mattresses, and other personal flotation devices are not considered vessels. A seaplane may be considered a vessel.

Weapon means a firearm or any other instrument or substance designed, used, or which can be used to cause or threaten to cause pain, injury, or death.

Wildlife means any non-domestic member of the animal kingdom and includes a part, product, egg, offspring, or dead body or part thereof, including, but not limited to, mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity.

You means a person or entity on Reclamation facilities, lands, or waterbodies.

§ 423.3 When does this part apply?

(a) This part and all applicable Federal, State, and local laws apply to all persons on Reclamation facilities, lands, and waterbodies, with the following exceptions:

(1) Certain exceptions apply to Federal, State, local, and contract employees, as further addressed in paragraph (b) of this section.

(2) Certain exceptions apply to non-Federal entities, as further addressed in paragraph (c) of this section;

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other

Federal agencies, as further addressed in paragraph (d) of this section; and

(4) Certain exceptions apply on Reclamation facilities, lands, and waterbodies subject to treaties and Federal laws concerning tribes and Indians, as further addressed in paragraph (e) of this section.

(b) This part does not apply to:

(1) Federal, State, and local law enforcement, fire, and rescue personnel in the performance of their official duties on Reclamation facilities, lands, and waterbodies;

(2) An employee or agent of the Federal, State, or local government, or other political subdivision, when the employee or agent is carrying out official duties; or

(3) An employee or agent of an entity that has entered into a contract or agreement with Reclamation to administer, operate, maintain, patrol, or provide security for Reclamation facilities, lands, and waterbodies, when the employee or agent is working within the scope of the defined activities described in the contract or agreement.

(c) If a non-Federal entity has assumed responsibility for operating, maintaining, or managing Reclamation facilities, lands, or waterbodies through a contract or other written agreement, public conduct in and on those Reclamation facilities, lands, and waterbodies will be regulated by this part 423 as well as any regulations established by the entity, the terms of the entity's contract with Reclamation, and applicable Federal, State, and local law.

(d) Public conduct on Reclamation facilities, lands, and waterbodies administered by other Federal agencies under statute or other authority will be governed by the regulations of those agencies rather than this part 423. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

(e) This part applies on all Reclamation facilities, lands, and waterbodies that are subject to Treaties with, and Federal laws concerning the rights of, federally recognized tribes, and individual Indians who are members thereof, to the extent that this part is consistent with those Treaties and Federal laws.

(f) This part 423 and other Federal laws will govern over any conflicting regulations of a non-Federal entity.

Subpart B—Areas Open and Closed to Public Use

§ 423.10 What areas are open to public use?

All Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under this Subpart B of this part 423, or as provided by 43 CFR part 420, Off-Road Vehicle Use.

§ 423.11 What areas are closed to public use?

The following Reclamation facilities, lands, and waterbodies, or portions thereof, are closed to public use:

(a) Those that were closed to public use as of April 17, 2006, as evidenced by fencing, gates, barriers, locked doors, road closures, signage, posting of notices, or other reasonably obvious means, as provided in § 423.14;

(b) Those that are closed after April 17, 2006 under § 423.12;

(c) Those that are closed periodically and regularly under § 423.13; and

(d) Those that are closed to off-road vehicle use pursuant to 43 CFR part 420.

§ 423.12 How will Reclamation notify the public of additional closed areas?

(a) *Non-emergency situations.* In non-emergency situations, an authorized official must provide 30 days advance public notice before closing all or portions of Reclamation facilities, lands, or waterbodies. The notice must include publication in a newspaper of general circulation in the locale of the Reclamation facilities, lands, or waterbodies to be closed. Non-emergency situations covered by this section include:

(1) Protection and security of Reclamation facilities and of Reclamation's employees and agents;

(2) Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities;

(3) Safe and efficient operation and maintenance of Reclamation projects;

(4) Reduction or avoidance of conflicts among visitor use activities;

(5) National security; or

(6) Other reasons in the public interest.

(b) *Emergency situations.* In emergency situations where delay would result in significant and immediate risks to public safety, security, or other public concerns, an authorized official may close all or portions of Reclamation facilities, lands, or waterbodies without advance public notice.

§ 423.13 How will Reclamation establish periodic and regular closures?

Reclamation facilities, lands, or waterbodies that are closed periodically and regularly, regardless of the date of the initial closure, must be noticed as provided in § 423.12(a) only once, and at any time the schedule of closure is changed.

§ 423.14 How will Reclamation post and delineate closed areas at the site of the closure?

Before or at the time of closing all or portions of Reclamation facilities, lands, or waterbodies to public use, the responsible authorized official must indicate the closure by:

(a) Locked doors, fencing, gates, or other barriers;

(b) Posted signs and notices at conspicuous locations, such as at normal points of entry and at reasonable intervals along the boundary of the closed area; or

(c) Other reasonably obvious means including, but not limited to, onsite personal contact with a uniformed official.

§ 423.15 How will Reclamation document closures or reopenings?

(a) The authorized official must document the reason(s) for establishing any closure or reopening that occurs after April 17, 2006. The official must do this before the closure or reopening, except in the situations described in § 423.12(b). In such situations, the authorized official must complete the documentation as soon as practicable.

(b) Documentation of a closure must cite one or more of the conditions for closure described in § 423.12 of this part.

(c) Documentation of closures or reopenings will be available to the public upon request, except when the release of this documentation could result in a breach of national security or the security of Reclamation facilities.

§ 423.16 Who can be exempted from closures?

(a) You may be exempted from a closure, subject to any terms and conditions established under paragraph (c) of this section, by written authorization from the authorized official who effected or who is responsible for the closure, if you are:

(1) A person with a license or concession agreement that requires you to have access to the closed Reclamation facilities, lands, or waterbodies;

(2) An owner or lessee of real property, resident, or business in the vicinity of closed Reclamation facilities, lands, or waterbodies who cannot reasonably gain access to your property,

residence, or place of business without entering and crossing such closed Reclamation facilities, lands, or waterbodies; or

(3) A holder of a permit granting you an exemption from the closure issued under Subpart D of this part 423 by the authorized official who effected or who is responsible for the closure.

(b) You may request exemption from a closure by writing to the authorized official who effected or who is responsible for the closure. You need not do so if you have such an exemption in effect on April 17, 2006.

(c) An authorized official may establish terms and conditions on any exemption from a closure, or terminate such exemption, for any of the reasons listed in § 423.12.

§ 423.17 How will Reclamation reopen closed areas?

An authorized official may reopen to public use any Reclamation facilities, lands, and waterbodies, or portions thereof. The authorized official may do this at any time with advance or subsequent public notice, except as required by other statute or regulation, and must document the reopening as provided in § 423.15.

§ 423.18 Use of closures.

Closures are to be used only where all public access is to be prohibited. Special use areas are to be used to restrict specific activities as set forth in Subpart E of this part 423.

Subpart C—Rules of Conduct

§ 423.20 General rules.

(a) You must obey all applicable Federal, State, and local laws whenever you are at or on any Reclamation facilities, lands, or waterbodies.

(b) You must comply with all provisions of this Subpart C whenever you are at or on any Reclamation facilities, lands, or waterbodies, except as specifically provided by:

(1) A permit issued by an authorized official under Subpart D of this part 423;

(2) A contract with Reclamation or agency managing Reclamation facilities, lands, and waterbodies;

(3) The rules established by an authorized official in a special use area under Subpart E of this part 423; or

(4) A right-of-use issued under 43 CFR part 429.

§ 423.21 Responsibilities.

(a) You are responsible for finding, being aware of, and obeying all applicable laws and regulations, as well as notices and postings of closed and special use areas established by an authorized official under Subpart B and Subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations, including non-compliance with limitations, restrictions, closures, or special use areas applicable to the use of any device, vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

(c) You are responsible for the use and treatment of Reclamation facilities, lands, and waterbodies, and the cultural resources, wildlife, and other natural resources located thereon, by you and those for whom you are legally responsible. This presumption is sufficient to issue a citation to you for violation of provisions of these regulations by you or by those for whom you are legally responsible.

(d) The regulations governing permits, other use authorizations, and fees on Reclamation lands that are found in Subpart D of this part 423 apply to your use of Reclamation facilities, lands, and waterbodies.

(e) You must furnish identification information upon request by a law enforcement officer.

§ 423.22 Interference with agency functions and disorderly conduct.

(a) You must not assault, threaten, disturb, resist, intimidate, impede, or interfere with any employee or agent of Federal, State, or local government engaged in an official duty.

(b) You must comply with any lawful order of an authorized government employee or agent for the purpose of maintaining order and controlling public access and movement during law enforcement actions and emergency or safety-related operations.

(c) You must not knowingly give a false report or other false information to an authorized government employee or agent.

(d) You must not interfere with, impede, or disrupt the authorized use of Reclamation facilities, lands, or waterbodies or impair the safety of any person.

(e) The following acts constitute disorderly conduct and are prohibited:

(1) Fighting, or threatening or violent behavior;

(2) Language, utterance, gesture, display, or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

(3) Unreasonable noise, considering the nature and purpose of the person's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

(4) Creating or maintaining a hazardous or physically offensive condition; or

(5) Any other act or activity that may cause or create public alarm, nuisance, or bodily harm.

§ 423.23 Abandonment and impoundment of personal property.

(a) You must not abandon personal property of any kind in or on Reclamation facilities, lands, or waterbodies.

(b) You must not store or leave unattended personal property of any kind.

(1) Unattended personal property is presumed to be abandoned:

(i) After a period of 24 hours;

(ii) At any time after a posted closure takes effect under Subpart B of this part 423; or

(iii) At any time for reasons of security, public safety, or resource protection.

(2) If personal property is presumed abandoned, an authorized official may impound it, store it, and assess a reasonable impoundment fee.

(3) The impoundment fee must be paid before the authorized official will return the impounded property to you.

(c) An authorized official may impound or destroy unattended personal property at any time if it:

(1) Interferes with safety, operation, or management of Reclamation facilities, lands, or waterbodies; or

(2) Presents a threat to persons or Reclamation project resources.

(d) An authorized official may dispose of abandoned personal property in accordance with the procedures contained in title 41 CFR and applicable Reclamation and Department of the Interior policy.

§ 423.24 Trespassing.

You must not trespass on Reclamation facilities, lands, and waterbodies. Trespass includes any of the following acts:

(a) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;

(b) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to Subpart B of this part 423;

(c) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

(d) Unauthorized conduct of commercial activities on Reclamation facilities, lands, or waterbodies;

(e) Holding unauthorized public gatherings on Reclamation facilities, lands, or waterbodies; or

(f) Unauthorized dumping or abandonment of personal property on Reclamation facilities, lands, or waterbodies.

§ 423.25 Vandalism, tampering, and theft.

(a) You must not tamper or attempt to tamper with, move, manipulate, operate, adjust, or set in motion property not under your lawful control or possession including, but not limited to, vehicles, equipment, controls, recreational facilities, and devices.

(b) You must not destroy, injure, deface, damage, or unlawfully remove property not under your lawful control or possession.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, down, or from, dams, spillways, dikes, or other structures and facilities.

§ 423.26 Public events and gatherings.

You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to Subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and waterbodies are governed by 43 CFR part 429.

§ 423.27 Advertising and public solicitation.

You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to Subpart D of this part 423.

§ 423.28 Memorials.

You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

§ 423.29 Natural and cultural resources.

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or waterbodies except in accordance with § 423.29(g) and other applicable Federal, State, and local laws.

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You may bring firewood to or gather dead wood on Reclamation lands for fires as allowed under § 423.31. You must not damage or remove any live tree or part thereof except with proper authorization under 43 CFR part 429.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under Subpart E of this part 423.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features on Reclamation lands, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, State, and local law; or

(2) As allowed by a permit issued pursuant to Subpart D of this part 423.

(g) You may engage in renewable natural resource gathering activities such as picking berries and mushrooms, collecting antlers, and other similar activities as regulated by this part 423 and other applicable Federal, State, and local laws.

§ 423.30 Weapons, firearms, explosives, and fireworks.

(a) You may possess firearms, ammunition, bows and arrows, crossbows, or other projectile firing devices on Reclamation lands and waterbodies, provided the firearm, ammunition, or other projectile firing device is stowed, transported, and/or carried in compliance with applicable Federal, State, and local law, with the following exceptions:

(1) You must not have a weapon in your possession when at or in a Reclamation facility.

(2) You must comply with any prohibitions or regulations applicable to weapons in a special use area established by an authorized official under Subpart E of this part 423.

(b) You must not discharge or shoot a weapon unless you are:

(1) Using a firearm or other projectile firing device lawfully for hunting or fishing as allowed under § 423.32, or at an authorized shooting or archery range; and

(2) In compliance with applicable Federal, State, and local law.

(c) You must not use or possess explosives, or fireworks or pyrotechnics of any type, except as allowed by a permit issued pursuant to Subpart D of this part 423, or in special use areas so designated by an authorized official under Subpart E of this part 423.

§ 423.31 Fires and flammable material.

(a) You must not leave a fire unattended, and it must be completely extinguished before your departure.

(b) You must not improperly dispose of lighted smoking materials, including cigarettes, cigars, pipes, matches, or other burning material.

(c) You must not burn materials that produce toxic fumes, including, but not limited to, tires, plastic, flotation materials, or treated wood products.

(d) You must not transport gasoline and other fuels in containers not designed for that purpose.

(e) You must comply with all applicable Federal, State, and local fire orders, restrictions, or permit requirements.

§ 423.32 Hunting, fishing, and trapping.

(a) You may hunt, fish, and trap in accordance with applicable Federal, State, and local laws, and subject to the restrictions of § 423.30, in areas where both of the following conditions are met:

(1) The area is not closed to public use under Subpart B of this part 423; and

(2) The area has not been otherwise designated by an authorized official in a special use area under Subpart E of this part 423.

(b) You must comply with any additional restrictions pertaining to hunting, fishing, and trapping established by an authorized official in a special use area under Subpart E of this part 423.

§ 423.33 Camping.

(a) You may camp on Reclamation lands, except that you must comply with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area under Subpart E of this part 423.

(b) You must not camp on Reclamation lands at any single Reclamation project for more than 14 days during any period of 30 consecutive days, except as allowed by a permit issued under 43 CFR part 429;

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance,

without camping on and paying the required fees for that campsite daily;

(d) You must not camp on or place any equipment at a campsite that is posted or otherwise marked as ''reserved'' or ''closed'' by an authorized official without a valid reservation for that campsite, except as allowed by a permit issued under Subpart D of this part 423; and

(e) You must not dig in or level any ground, or erect any structure other than a tent, in a designated campground.

§ 423.34 Sanitation.

(a) You must not bring or improperly dispose of refuse on Reclamation facilities, lands, and waterbodies. Both the owner and the person bringing or disposing refuse may be issued a citation for violating this provision.

(b) Campers, picnickers, and all other persons using Reclamation lands must keep their sites free of trash and litter during the period of occupancy and must remove all personal equipment and clean their sites before departure.

(c) You must not place or construct a toilet or latrine such that its lowest point is lower than the high water mark of any Reclamation waterbody, or within 150 feet horizontally of the high water mark of any Reclamation waterbody.

§ 423.35 Animals.

(a) You must not bring pets or other animals into public buildings, public transportation vehicles, or sanitary facilities. This provision does not apply to properly trained animals assisting persons with disabilities, such as seeing-eye dogs.

(b) You must not abandon any animal on Reclamation facilities, lands, or waterbodies, or harass, endanger, or attempt to collect any animal except game you are attempting to take in the course of authorized hunting, fishing, or trapping.

(c) Any unauthorized, unclaimed, or unattended animal on Reclamation lands may be:

(1) Removed in accordance with Federal law, and applicable State and local laws; and

(2) Confined at a location designated by an authorized official, who may assess a reasonable impoundment fee that must be paid before the impounded animal is released to its owner.

(d) The following animals are prohibited and are subject to removal in accordance with Federal law, and applicable State and local laws:

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit issued under Subpart D of this part 423; and

(2) Any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance.

§ 423.36 Swimming.

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) Within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, and outlet works;

(2) Within 100 yards of buoys or barriers marking public access limits;

(3) In canals, laterals, siphons, tunnels, and drainage works;

(4) At public docks, launching sites, and designated mooring areas; or

(5) As otherwise delineated by signs or other markers.

(b) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when engaging in any underwater activities.

(c) You must not dive, jump, or swing from dams, spillways, bridges, cables, towers, or other structures.

§ 423.37 Winter activities.

(a) You must not tow persons on skis, sleds, or other sliding devices with a motor vehicle or snowmobile, except that you may tow sleds designed to be towed behind snowmobiles if joined to the towing snowmobile with a rigid hitching mechanism, and you may tow disabled snowmobiles by any appropriate means.

(b) You must not ice skate, ice fish, or ice sail within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, or outlet works.

(c) You must comply with all other posted restrictions.

§ 423.38 Operating vessels on Reclamation waters.

(a) You must comply with Federal, State, and local laws applicable to the operation of a vessel, other watercraft, or seaplane on Reclamation waters, and with any restrictions established by an authorized official.

(b) You must not operate a vessel, other watercraft, or seaplane in an area closed to the public.

(c) You must observe restrictions established by signs, buoys, and other regulatory markers.

(d) You must not operate a vessel, or knowingly allow another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a person, property, natural resource, or cultural resource.

(e) You must not operate a vessel when impaired or intoxicated under the standards established by applicable State and local law.

(f) You must not occupy a vessel overnight, except where otherwise designated under applicable Federal, State, or local law, or where otherwise designated by an authorized official in a special use area.

(g) You must not use a vessel as a place of habitation or residence.

(h) You must remove your vessels from Reclamation lands and waters when not in actual use for a period of more than 24 hours, unless they are securely moored or stored at special use areas so designated by an authorized official.

(i) You must not attach or anchor a vessel to structures such as locks, dams, regulatory or navigational buoys, or other structures not designed for such purpose.

(j) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when operating a vessel involved in any underwater activities.

(k) You may engage in towing activities, including, but not limited to, waterskiing and tubing, only during daylight hours and subject to any applicable Federal, State, and local law.

§ 423.39 Standards for vessels.

(a) All vessels on Reclamation waters must:

(1) Be constructed and maintained in compliance with the standards and requirements established by, or promulgated under, Title 46 United States Code, and any applicable State and local laws and regulations;

(2) Have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with applicable State and local boating safety laws and regulations; and

(3) If motorized, have and utilize a proper and effective exhaust muffler as defined by applicable State and local laws. Actions or devices which render exhaust mufflers ineffective are prohibited.

(b) Owners or operators of vessels not in compliance with this § 423.39 may be required to remove the vessel immediately from Reclamation waterbodies until items of non-compliance are corrected.

§ 423.40 Vehicles.

(a) When operating a vehicle on Reclamation lands and Reclamation

projects, you must comply with applicable Federal, State, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

(b) You must not park a vehicle in violation of posted restrictions and regulations, or in a manner that would obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) You must not operate any vehicle, or allow another person to operate a vehicle in your control, in a careless, negligent or reckless manner that would endanger any person, property, natural resource, or cultural resource.

(d) In addition to the regulations in this part, the regulations governing off-road-vehicle use in 43 CFR part 420 apply.

§ 423.41 Aircraft.

(a) You must comply with any applicable Federal, State, and local laws, and with any additional requirements or restrictions established by an authorized official in a special use area under Subpart E of this part 423, with respect to aircraft landings, takeoffs, and operation on or in the proximity of Reclamation facilities, lands, and waterbodies. Pilots are responsible for awareness of all applicable laws, regulations, requirements, and restrictions. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, State, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

(b) You must not operate any aircraft while on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger any person, property, or natural feature.

(c) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

(e) You must comply with all applicable U.S. Coast Guard rules when operating a seaplane on Reclamation waterbodies.

(f) You must securely moor any seaplane remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Seaplanes may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or the safety of persons; and

(2) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(g) You must not operate model aircraft except as allowed in special use areas established by an authorized official under Subpart E of this part 423.

§ 423.42 Gambling.

Commercial gambling in any form, or the operation of gambling devices, is prohibited on Reclamation facilities, lands, and waterbodies unless authorized by applicable treaties or Federal, State, and local laws or regulations.

§ 423.43 Alcoholic beverages.

You must not possess or consume alcoholic beverages in violation of Federal, State, or local law, or the rules of a special use area established by an authorized official under Subpart E of this part 423.

§ 423.44 Controlled substances.

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

Subpart D—Authorization of Otherwise Prohibited Activities

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, or waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.29(f), 423.30(c), 423.33(d), and 423.35(d)(1), and may terminate or revoke such permits for non-use, non-compliance with the terms of the permit, violation of any applicable law, or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

(b) You may apply for permission to engage in activities otherwise prohibited or restricted by the sections listed in paragraph (a) of this section. You may apply to the authorized official responsible for the area in which your activity is to take place, and this authorized official may grant, deny, or establish conditions or limitations on this permission.

(c) You must pay all required fees and properly display applicable permits, passes, or receipts.

(d) You must not violate the terms and conditions of a permit issued by an authorized official. Any such violation is prohibited and may result in suspension or revocation of the permit, or other penalties as provided in Subpart F of this part 423, or both.

(e) You must, upon request by a law enforcement officer, security guard, or other government employee or agent acting within the scope of their official duties, display any permit authorizing your presence or activity on Reclamation facilities, lands, and waterbodies.

Subpart E—Special Use Areas

§ 423.60 How special use areas are designated.

(a) After making a determination under paragraph (b) of this section, an authorized official may:

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of Subpart C of this part 423, except § 423.28; and

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

(b) Before taking action under paragraph (a) of this section, an authorized official must make a determination that action is necessary for:

(1) The protection of public health and safety;

(2) The protection and preservation of cultural and natural resources;

(3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or

(4) Other reasons in the public interest.

(c) An authorized official establishing a special use area must document in writing the determination described in paragraph (b) of this section. Such documentation must occur before the action, except in emergencies or situations of immediate need as described in § 423.61(c), in which case the documentation is required within 30 days after the date of the action. Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

§ 423.61 Notifying the public of special use areas.

When establishing, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain.* The notice must specify:

(1) The location of the special use area; and

(2) The public use limits, conditions, restrictions, allowances, or prohibitions on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made.* Reclamation must notify the public at least 15 days before the action takes place by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;

(2) Maps available in the local Reclamation office and other places convenient to the public;

(3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed.*

(1) Notice under this section may be delayed in an emergency or situation of immediate need where delaying designation, revision, or termination of a special use area would result in significant risk to:

(i) National security;

(ii) The safety or security of a Reclamation facility, Reclamation employees, or the public; or

(iii) The natural or cultural environment.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When advance notice is not required.* Advance notice as described in paragraph (b) of this section is not required if all the following conditions are met:

(1) The action will not result in a significant change in the public use of the area;

(2) The action will not adversely affect the area's natural, esthetic, scenic, or cultural values;

(3) The action will not require a long-term or significant modification in the resource management objectives of the area; and

(4) The action is not highly controversial.

§ 423.62 Reservations for public use limits.

To implement a public use limit, an authorized official may establish a registration or reservation system.

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006 that differ from the rules set forth in Subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by Subpart A, and to the extent they are consistent with § 423.28. For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

(1) Any closure orders established under Subpart B of this part 423;

(2) The regulations in Subpart C of this part 423;

(3) The conditions established by any permit issued under Subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under Subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

§ 423.71 Sanctions.

Under section (1)(a) of Public Law 107–69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

(a) The provisions of this part 423; or

(b) Any condition, limitation, closure, prohibition on uses or activities, or public use limits, imposed under this part 423.

[FR Doc. E8–29088 Filed 12–10–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–008; 92220–1113–0000; C6]

RIN 1018–AW35

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes and Northern Rocky Mountains in Compliance With Court Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are issuing this final rule to comply with three court orders which have the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf (*Canis lupus*) in the western Great Lakes and the northern Rocky Mountains. This rule corrects the gray wolf listing at 50 CFR 17.11 to reinstate the listing of wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, the northwestern portion of Ohio, the northern half of Montana, the northern panhandle of Idaho, the eastern third of Washington and Oregon, and in north-central Utah as endangered, and reinstate the listing of wolves in Minnesota as threatened. This rule also reinstates the former designated critical habitat in 50 CFR 17.95(a) for gray wolves in Minnesota and Michigan, special regulations in 50 CFR 17.40(d) for the gray wolf in Minnesota, and special rules in 50 CFR 17.84 designating the gray wolf in the remainder of Montana and Idaho and all of Wyoming as nonessential experimental populations.

This action revises the CFR to comply with three court orders. In addition, this final rule takes additional administrative action that removes archaic provisions from the gray wolf special regulation at 50 CFR 17.84(i) and makes corrections to the gray wolf special regulation at § 17.84(n) by removing language referring to a Western DPS.

DATES: This action is effective December 11, 2008. However, the court orders had legal effect immediately upon their filing on July 18, 2008, September 29, 2008, and October 14, 2008.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Office of the Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601. Call 406–449–5225 to make arrangements. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111. Call 612–713–5350 to make arrangements.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains contact Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone 406–449–5225, extension 204. For information on wolves in the western Great Lakes, contact Laura Ragan, Regional Listing Coordinator, U.S. Fish and Wildlife Service, at our Fort Snelling, Minnesota Regional Office (see **ADDRESSES**) or telephone 612–713–5350. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Information about the life history of the gray wolf and previous Federal actions can be found in our February 8, 2007 (72 FR 6052), final rule for the Western Great Lakes Distinct Population Segment (WGL DPS) of the gray wolf and our February 27, 2008 (73 FR 10514), final rule for the Northern Rocky Mountains Distinct Population Segment (NRM DPS) of the gray wolf.

On April 16, 2007, three parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), for the WGL DPS. On September 29, 2008, the U.S. District Court for the District of Columbia ruled in favor of the plaintiffs (*Humane Society of the United States* v. *Kempthorne*, 1:07–CV–00677 (D. Columbia)). The court granted the plaintiffs' motion for summary judgment and vacated and remanded the Service's application of the February 8, 2007 (72 FR 6052), final rule for the WGL DPS of the gray wolf.

On April 28, 2008, twelve parties filed a lawsuit in the U.S. District Court for the District of Montana challenging the Service's February 27, 2008, final rule (73 FR 10514) for the NRM DPS. On July 18, 2008, the court enjoined the Service's implementation of the February 27, 2008, final rule and ordered the reinstatement of Endangered Species Act protections for the northern Rocky Mountain gray wolf. At the Service's request, the court issued an order on October 14, 2008, that vacated the final delisting rule and remanded it back to the Service for further consideration.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule we established three DPSs for the gray wolf, including a Western DPS. On January 6, 2005, we published a final rule establishing a special regulation at 50 CFR 17.84(n) for the Yellowstone and central Idaho nonessential experimental populations (NEP) (70 FR 1286). At that time, these NEPs were correctly described as existing within the boundaries of a Western DPS. However, on January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that our April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Norton*, 1:03–1348–JO, D. OR 2005; *National Wildlife Federation* v. *Norton*, 1:03–CV–340, D. VT. 2005). The Courts' rulings invalidated the three DPS designations in the April 2003 rule, including the Western DPS. Therefore, as we reinstate the special regulations at § 17.84(n) for the Yellowstone and central Idaho NEPs, we also remove from the regulation erroneous language referring to the defunct Western DPS. In addition, we are removing archaic provisions from the gray wolf special regulation at 50 CFR 17.84(i) that applied only in the immediate aftermath of the NEP reintroductions.

Administrative Procedure

This rulemaking is necessary to comply with the July 18, 2008, September 29, 2008, and October 14, 2008, court orders. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

As of the filing of the respective court orders, any and all wolves in the northern Rocky Mountains and western Great Lakes, except in Minnesota, are listed as an endangered species under the ESA. Any and all wolves in Minnesota are listed as a threatened species under the ESA. The reinstated regulations found at 50 CFR 17.95 designate critical habitat for gray wolves in Minnesota and Michigan, and the reinstated special regulations in 50 CFR 17.40(d) govern the regulation of gray wolves in Minnesota. The provisions of these regulations are the same as those in the prior regulations that were removed per our February 8, 2007, final delisting rule (72 FR 6052).

The reinstated special rules found at 50 CFR 17.84(i) and (n) designate part of the wolves in the northern Rocky Mountains as nonessential experimental populations. The provisions of the special rules are the same as those in the prior special rules that were removed per our February 27, 2008, final delisting rule (73 FR 10514).

This means that wolves in Wisconsin, Michigan, North Dakota, South Dakota, Iowa, Illinois, Indiana, Ohio, Washington, Oregon, Utah, the Idaho panhandle, and northern Montana are hereby listed as endangered (50 CFR 17.11(h)). Wolves in Minnesota are listed as threatened (50 CFR 17.11(h)). Wolves in southern Montana, Idaho south of Interstate 90, and all of Wyoming are hereby listed as nonessential experimental populations under section 10(j) of the ESA (50 CFR 17.84(i) and (n)). The maps in the rule portion of this document illustrate the boundaries of the nonessential experimental population areas.

This rule will not affect the status of the gray wolf in the western Great Lakes or northern Rocky Mountains under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf's Appendix II status under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

Additionally, pursuant to section 6 of the Act, we are able to grant available funds to the States for management actions promoting the protection of gray wolves in the western Great Lakes and northern Rocky Mountains.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, in order to comply with the court orders discussed above, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11 by revising the entry in the table at paragraph (h) for ''Wolf, gray'' as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	
Wolf, gray ...	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except MN and where listed as an experimental population below; Mexico.	E	1, 6, 13, 15, 35	17.95(a)	N/A
Do	.....do	.....do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	.....do	.....do	U.S.A. (MT, ID, WY—see sections 17.84(i) and 17.84(n)).	XN	561, 562	N/A	17.84(i), 17.84(n)
Do	.....do	.....do	U.S.A. (portions of AZ, NM, and TX—see section 17.84(k)).	XN	631	N/A	17.84(k)
*	*	*	*	*	*	*	

■ 3. Amend § 17.40 by adding paragraph (d) as set forth below:

§ 17.40 Special rules—mammals.

* * * * *

(d) Gray wolf (*Canis lupus*) in Minnesota.

(1) *Zones.* For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) Zone 1—4,488 square miles. Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27 and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis county lines to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE ¼, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the Canadian Border to the point of beginning in Rainy Lake.

(ii) Zone 2—1,856 square miles. Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missable and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and

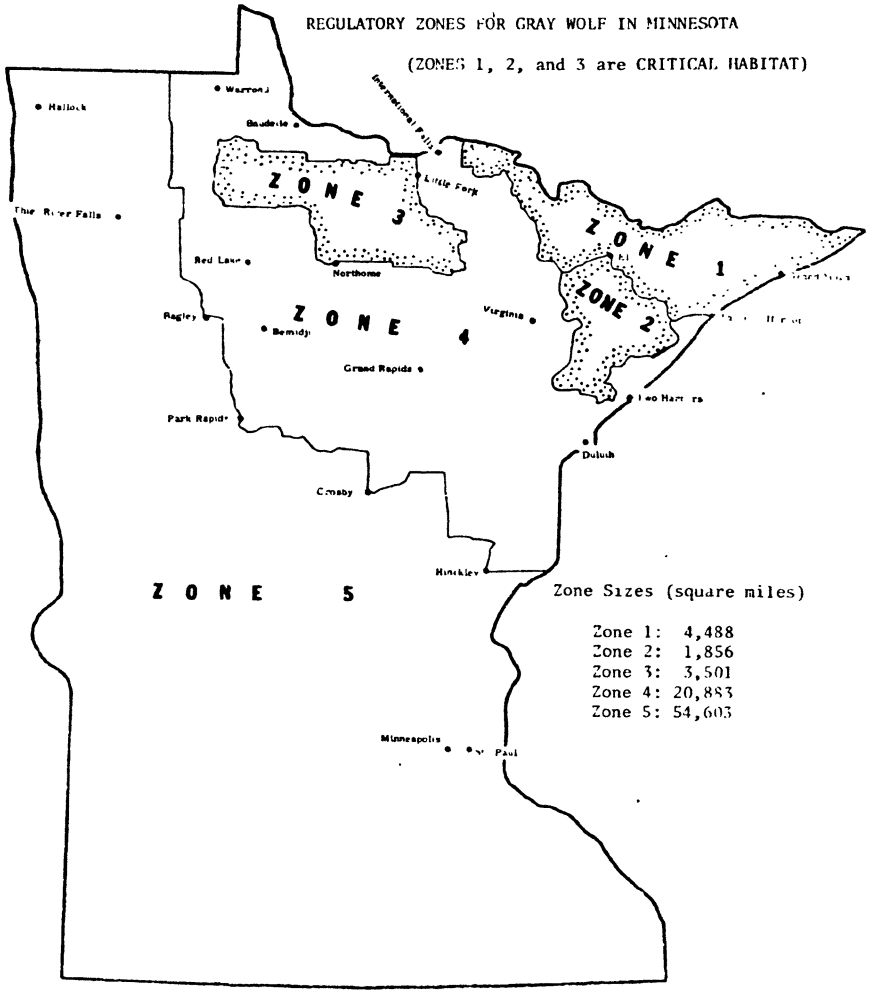
subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

(iii) Zone 3—3,501 square miles. Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95: thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63; thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) Zone 4–20,883 square miles. Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the state; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I–35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) Zone 5—54,603 square miles. All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:



(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(*1*) Aid a sick, injured or orphaned specimen; or

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(*4*) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(l) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

* * * * *

■ 4. Amend § 17.84 by adding paragraphs (i) and (n) as set forth below:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) Gray wolf (*Canis lupus*).

(1) The gray wolves (wolf) identified in paragraph (i)(7) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this paragraph (i).

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in paragraph (i)(7) of this section, will further the conservation of the species.

(3) No person may take this species in the wild in an experimental population area except as provided in paragraphs (i)(3), (7), and (8) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service) who are legally using public land (Federal land and any other public lands designated in State and tribal wolf management plans as approved by the Service) may harass any wolf in an opportunistic (the wolf cannot be purposely attracted, tracked, waited for, or searched out, then harassed) and noninjurious (no temporary or permanent physical damage may result) manner at any time, provided that such harassment is nonlethal or is not physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), provided that such incidents are reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service-authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit, valid for up to 45 days, from the Service or other agencies designated by the Service, to take (including to kill or injure) a wolf that is in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), provided that six or more breeding pairs of wolves have been documented in the experimental population area and the Service or other agencies authorized by the Service has confirmed that the livestock losses were caused by wolves and has completed agency efforts to resolve the problem. Such take must be reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service. There must be evidence of freshly wounded or killed livestock by wolves. Service or other Service-authorized agencies will investigate and determine if the livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) Potentially affected States and tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7) of this section, provided the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service, may promptly remove (place in captivity or kill) any wolf that the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, provided that such take is reported within 24 hours to the Service reintroduction project leader or Service designated agent. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are determined to be ''problem'' wolves. Problem wolves are defined as wolves that in a calendar year attack livestock (cattle, sheep, horses, and mules or as defined by State and tribal wolf management plans approved by the Service) or wolves that twice in a calendar year attack domestic animals (all domestic animals other than livestock). Authorized take includes, but is not limited to, nonlethal measures such as: Aversive conditioning, nonlethal control, and/or translocating wolves. Such taking may be done when five or fewer breeding pairs are established in an experimental population area. If the take results in a wolf mortality, then evidence that the mortality was nondeliberate, accidental, nonnegligent, and unavoidable must be provided. When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized but only after other methods to resolve livestock depredations have been exhausted. Depredations occurring on Federal lands or other public lands identified in State or tribal wolf management plans and prior to six breeding pairs becoming established in an experimental population area may result in capture and release of the female wolf and her pups at or near the site of capture prior to October 1. All wolves on private land, including female wolves with pups, may be relocated or moved to other areas within the experimental population area if continued depredation occurs. Wolves attacking domestic animals other than livestock, including pets on private land, two or more times in a calendar year will be relocated. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three criteria will be used in determining the status of problem wolves within the nonessential experimental population area:

(A) There must be evidence of wounded livestock or partial remains of a livestock carcass that clearly shows that the injury or death was caused by wolves. Such evidence is essential since wolves may feed on carrion that they found and did not kill. There must be reason to believe that additional livestock losses would occur if no control action is taken.

(B) There must be no evidence of artificial or intentional feeding of wolves. Improperly disposed of livestock carcasses in the area of depredation will be considered attractants. Livestock carrion or carcasses on public land, not being used as bait under an agency-authorized control action, must be removed or otherwise disposed of so that it will not attract wolves.

(C) On public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take a gray wolf found in an area defined in paragraph (i)(7) of this section, provided that the take is incidental to an otherwise lawful activity, accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking a gray wolf. Such taking is to be reported within 24 hours to a Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or tribal personnel may receive written authorization from the Service to take animals under special circumstances. Wolves may be live-captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Act, or when they are found outside of the designated experimental population area. Take procedures in such instances would involve live-capture and release to a remote area or placement in a captive facility, if the animal is clearly unfit to remain in the wild. Killing of wolves will be a last resort and is only authorized when live-capture attempts have failed or there is clear endangerment to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild within the experimental population area, if such action is for:

(A) Scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen that may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported within 24 hours to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(4) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and tribal land management agencies. When five or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when five or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites and would apply only to public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed outside of national parks or national wildlife refuges, unless wolf populations fail to maintain positive growth rates toward population recovery levels for 2 consecutive years. If such a situation arose, State and tribal agencies would identify, recommend, and implement corrective management actions within 1 year, possibly including appropriate land-use restrictions to promote growth of the wolf population.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (i) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Endangered Species Act.

(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (i).

(7) The sites for reintroduction are within the historic range of the species:

(i) The central Idaho area is shown on the following map. The boundaries of the nonessential experimental population area will be those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.

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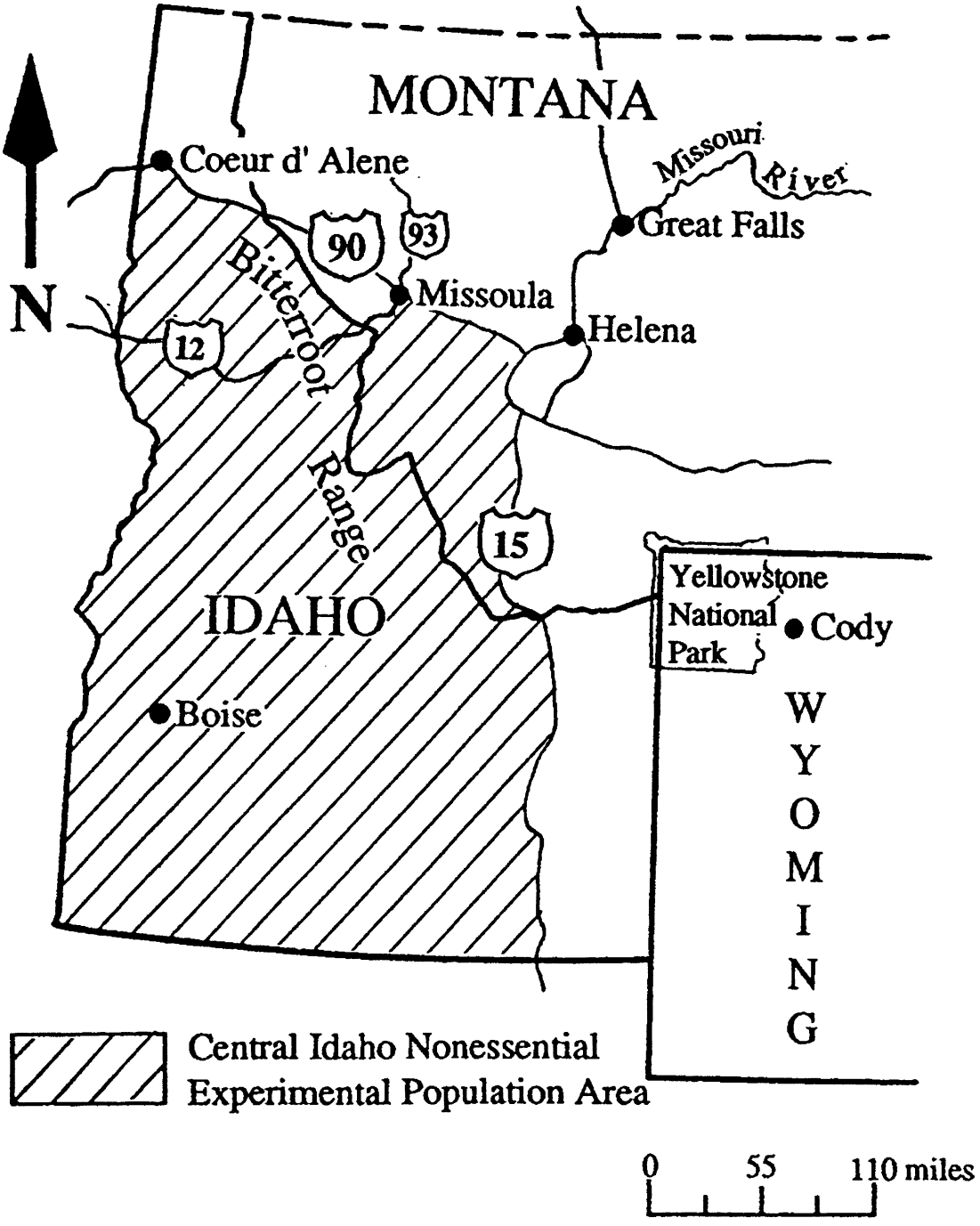
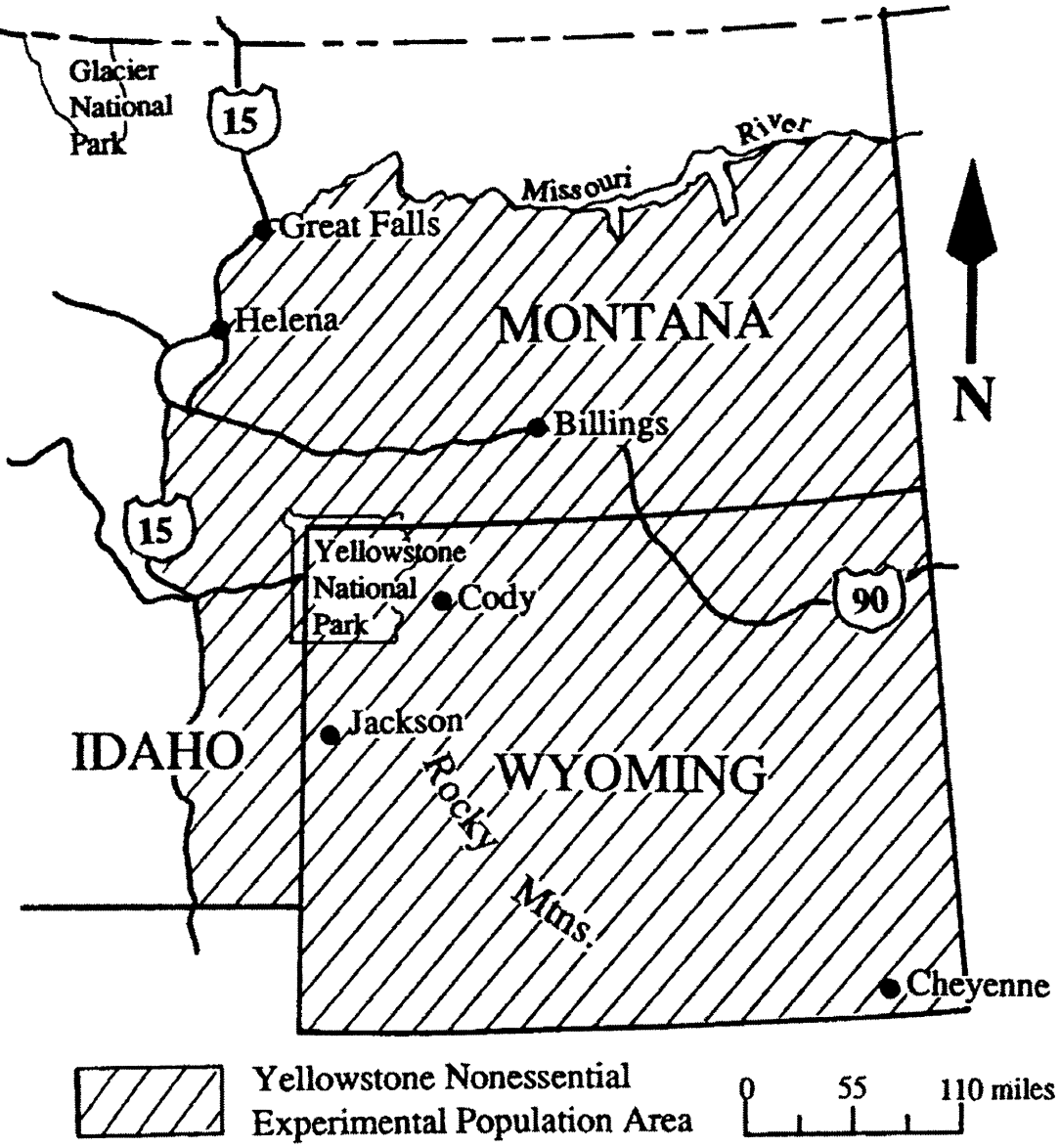


Map 1

(ii) The Yellowstone Management Area is shown on the following map. The boundaries of the nonessential experimental population area will be that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



Map 2

(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it will be returned to captivity or killed.

(8) The reintroduced wolves will be monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as

appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service-designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(9) The Service does not intend to reevaluate the ''nonessential experimental'' designation. The Service does not foresee any likely situation that would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the northern Rocky Mountains according to provisions outlined in the Act.

* * * * *

(n) Gray wolf (*Canis lupus*).

(1) The gray wolves (wolf) identified in paragraphs (n)(9)(i) and (ii) of this section are nonessential experimental populations. These wolves will be managed in accordance with the respective provisions of this paragraph (n) in the boundaries of the nonessential experimental population (NEP) areas within any State or Tribal reservation that has a wolf management plan that has been approved by the Service, as further provided in this paragraph (n). Furthermore, any State or Tribe that has a wolf management plan approved by the Service can petition the Secretary of the Department of the Interior (DOI) to assume the lead authority for wolf management under this rule within the borders of the NEP areas in their respective State or reservation.

(2) The Service finds that management of nonessential experimental gray wolves, as defined in this paragraph (n), will further the conservation of the species.

(3) Definitions of terms used in paragraph (n) of this section follow:

Active den site—A den or a specific above-ground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

Breeding pair—An adult male and an adult female wolf that, during the previous breeding season, produced at least two pups that survived until December 31 of the year of their birth.

Designated agent—Includes Federal agencies authorized or directed by the Service, and States or Tribes with a wolf management plan approved by the Director of the Service and with established cooperative agreements with us or Memoranda of Agreement (MOAs) approved by the Secretary of the DOI. Federal agencies, States, or Tribes may become ''designated agents'' through cooperative agreements with the Service whereby they agree to assist the Service to implement some portions of this rule. If a State or Tribe becomes a ''designated agent'' through a cooperative agreement, the Service will help coordinate their activities and retain authority for program direction, oversight, and guidance. States and Tribes with approved plans also may become ''designated agents'' by submitting a petition to the Secretary to establish an MOA under this rule. Once accepted by the Secretary, the MOA may allow the State or Tribe to assume lead authority for wolf management and to implement the portions of their State or Tribal plans that are consistent with this rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations for wolf take on reservations without approved wolf management plans, and an annual review of the State or Tribal program to ensure the wolf population is being maintained above recovery levels.

Domestic animals—Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

Intentional harassment—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions (such as 12-gauge shotgun rubber-bullets and bean-bag shells), that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

In the act of attacking—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

Landowner—An owner of private land, or his/her immediate family members, or the owner's employees who are currently employed to actively work on that private land. In addition, the owner(s) (or his/her employees) of livestock that are currently and legally grazed on that private land and other lease-holders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are considered landowners on that private land for the purposes of this regulation. Private land, under this regulation, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands in States with approved plans are considered landowners for the purposes of this rule. ''Landowner'' in this regulation includes legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

Legally present—A person is legally present when (i) on his or her own property, (ii) not trespassing and has the landowner's permission to bring his or her stock animal or dog on the property, or (iii) abiding by regulations governing legal presence on public lands.

Livestock—Cattle, sheep, horses, mules, goats, domestic bison, and herding and guarding animals (llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock excludes dogs that are not being used for livestock guarding or herding.

Non injurious—Does not cause either temporary or permanent physical damage or death.

Opportunistic harassment—Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

Private land—All land other than that under Federal Government ownership and administration and including Tribal reservations.

Problem wolves—Wolves that have been confirmed by the Service or our designated agent(s) to have attacked or been in the act of attacking livestock or dogs on private land or livestock on public land within the past 45 days. Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals on private land twice within a calendar year are considered problem wolves for purposes of agency wolf control actions.

Public land—Federal land such as that administered by the National Park Service, Bureau of Land Management, USDA Forest Service, Bureau of Reclamation, Department of Defense, or other agencies with the Federal Government.

Public land permittee—A person or that person's employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock, or operate an outfitter or guiding business that uses livestock. This definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, or Christmas trees;

logging; mining; oil or gas development; or other uses that do not require livestock. In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.

Remove—Place in captivity, relocate to another location, or kill.

Research—Scientific studies resulting in data that will lend to enhancement of the survival of the gray wolf.

Rule—Federal regulations—''This rule'' or ''this regulation'' refers to this final NEP regulation.

Stock animal—A horse, mule, donkey, llama, or goat used to transport people or their possessions.

Unacceptable impact—Impact to ungulate population or herd where a State or Tribe has determined that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

Ungulate population or herd—An assemblage of wild ungulates living in a given area.

Wounded—Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.

(4) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described under this paragraph (n)(4), are allowed: Opportunistic harassment; intentional harassment; take on private land; take on public land except land administered by National Parks; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes; and take to protect stock animals and dogs. Other than as expressly provided in this rule, all other forms of take are considered a violation of section 9 of the Act. Any wolf or wolf part taken legally must be turned over to the Service unless otherwise specified in this paragraph (n). Any take of wolves must be reported as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or our designated agent(s) within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent(s) have confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, we or our designated agent(s) may issue written take authorization valid for not longer than 1 year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

(iii) *Take by landowners on their private land.* Landowners may take wolves on their private land in the following two additional circumstances:

(A) Any landowner may immediately take a gray wolf in the act of attacking livestock or dogs on his or her private land, provided the landowner provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) A landowner may take wolves on his or her private land if we or our designated agent issued a ''shoot-on-sight'' written take authorization of limited duration (45 days or less), and if:

(*1*) This landowner's property has had at least one depredation by wolves on livestock or dogs that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that private property and present a significant risk to the health and safety of other livestock or dogs; and

(*3*) We or our designated agent(s) have authorized lethal removal of problem wolves from that same property. The landowner must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(iv) *Take on public land.* Any livestock producer and public land permittee (see definitions in paragraph (n)(3) of this section) who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking his or her livestock on the person's allotment or other area authorized for his or her use without prior written authorization, provided that that producer or permittee provides evidence of livestock recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(A) At our or our designated agent(s)' discretion, we or our designated agent(s) also may issue a shoot-onsight written take authorization of limited duration (45 days or less) to a public land grazing permittee to take problem wolves on that permittee's active livestock grazing allotment if:

(*1*) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock; and

(*3*) We or our designated agent(s) have authorized lethal removal of problem wolves from that same allotment.

(B) The permittee must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(v) *Take in response to wild ungulate impacts.* If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the State or Tribes must prepare a science-based document that:

(*1*) Describes the basis of ungulate population or herd management objectives, what data indicate that the ungulate population or herd is below management objectives, what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and

control actions adjusted for effectiveness;

(*2*) Demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and

(*3*) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. The State or Tribe must:

(*i*) Conduct the peer review process in conformance with the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(*ii*) Obtain at least five independent peer reviews from individuals with relevant expertise other than staff employed by a State, Tribal, or Federal agency directly or indirectly involved with predator control or ungulate management in Idaho, Montana, or Wyoming.

(B) Before we authorize lethal removal, we must determine that an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science-based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without demonstration of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or our designated agent(s) may promptly remove any wolf that we or our designated agent(s) determines to be a threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent(s).* We or our designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, we or our designated agent(s) will consider all of the following:

(A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock, dogs, or domestic animals;

(B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

(C) Evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported within 24 hours. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such take, or it was not reported within 24 hours (we may allow additional time if access to the site of the take is limited), and we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32, or our designated agent(s), may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional take authorization for agency employees.* When acting in the course of official duties, any employee of the Service or our designated agent(s) may take a wolf or wolf-like canid for the following purposes:

(A) Scientific purposes;

(B) To avoid conflict with human activities;

(C) To further wolf survival and recovery;

(D) To aid or euthanize sick, injured, or orphaned wolves;

(E) To dispose of a dead specimen;

(F) To salvage a dead specimen that may be used for scientific study;

(G) To aid in law enforcement investigations involving wolves; or

(H) To prevent wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.

(I) Such take must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.

(xii) *Take for research purposes.* We may issue permits under § 17.32, or our designated agent(s) may issue written authorization, for individuals to take wolves in the wild pursuant to approved scientific study proposals. Scientific studies should be reasonably expected to result in data that will lend to development of sound management of the gray wolf, and lend to enhancement of its survival as a species.

(xiii) *Take to protect stock animals and dogs.* Any person legally present on private or public land, except land administered by the National Park Service, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The person must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the person must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, may be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (n) of this section or in a permit, any take of a gray wolf must be reported to the Service or our designated agent(s) within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of wolves, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 North Park, Suite 320, Helena, Montana 59601, 406–449–5225 extension 204; facsimile 406–449–5339), or a Service-designated agent of another Federal, State, or Tribal agency. Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part taken legally must be turned over to the

Service, which will determine the disposition of any live or dead wolves.

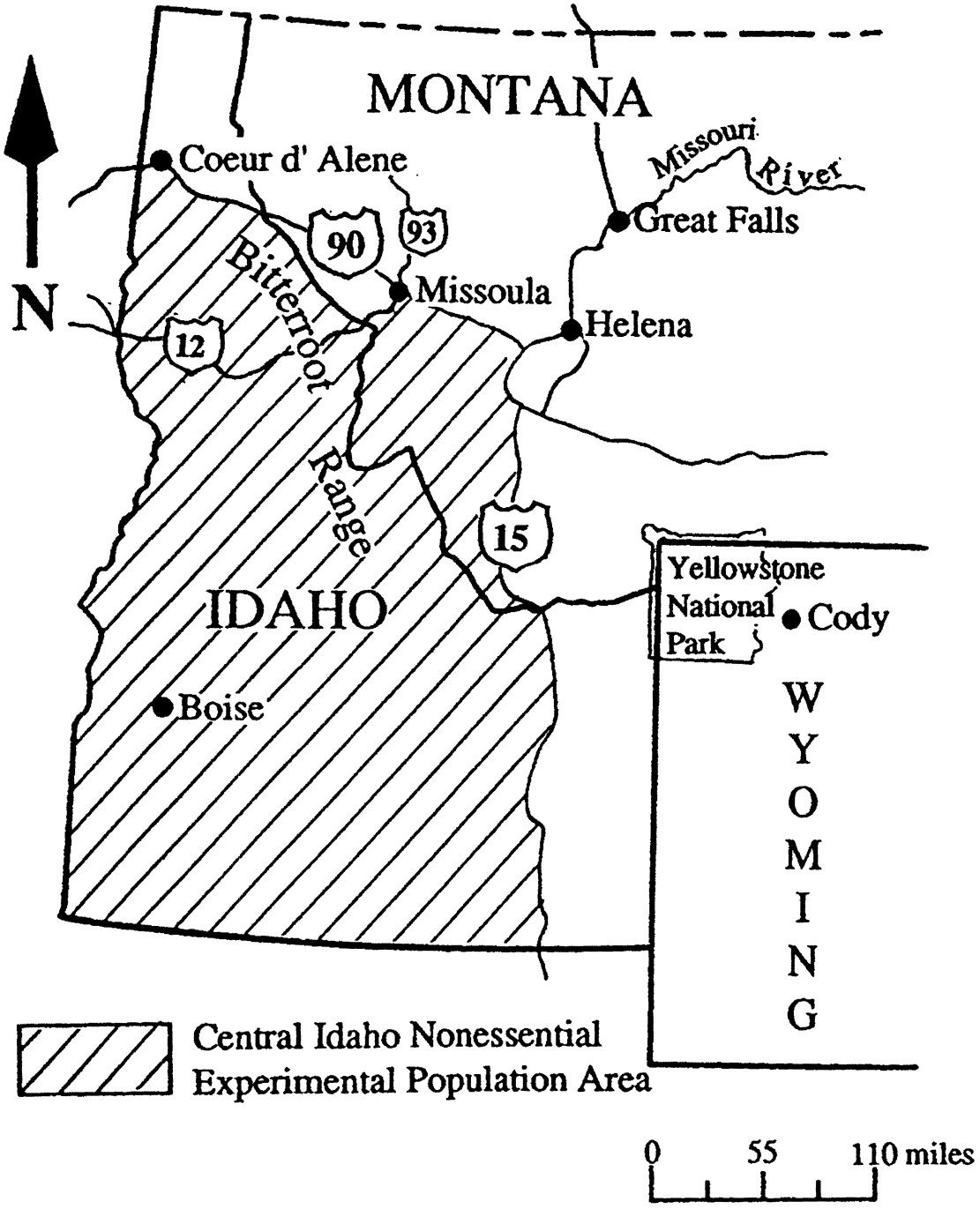
(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (n) of this section or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

(9) The sites for these experimental populations are within the historic range of the species as designated in § 17.84(i)(7):

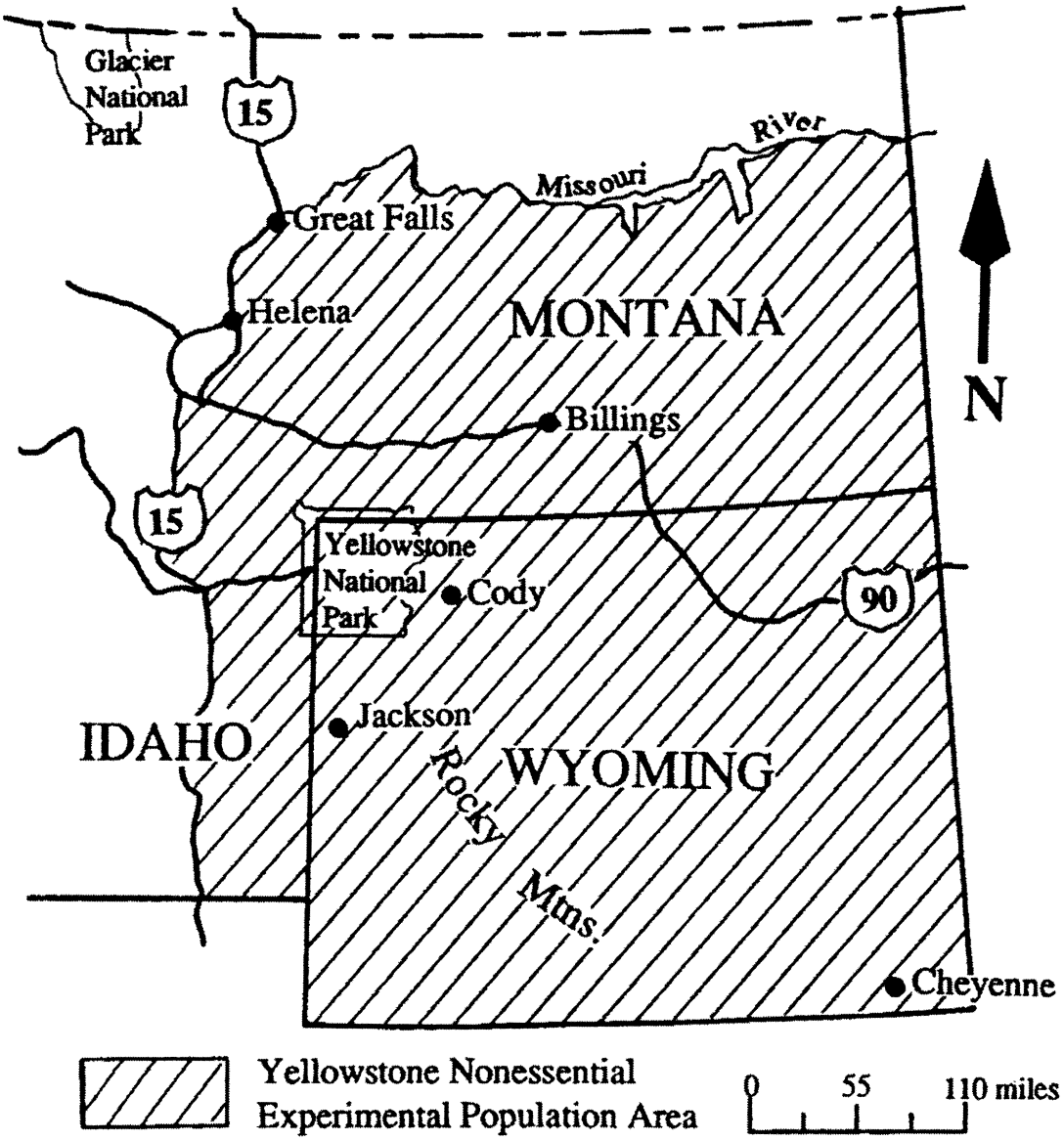
(i) The central Idaho NEP area is shown on the following map. The boundaries of the NEP area are those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.

BILLING CODE 4310–55–P



Map 1

(ii) The Yellowstone NEP is shown on the following map. The boundaries of the NEP area are that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



Map 2

(iii) All wolves found in the wild within the boundaries of these experimental areas are considered nonessential experimental animals.

(10) Wolves in the experimental population areas will be monitored by radio-telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent(s) and given appropriate care. Such an animal will be released back into its respective area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(11) *Memoranda of Agreement (MOAs).* Any State or Tribe with gray wolves, subject to the terms of this paragraph (n), may petition the Secretary for an MOA to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in that State or on that Tribal reservation, and implement all parts of their approved State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Secretary.

(i) A State or Tribal petition for wolf management under an MOA must show:

(A) That authority and management capability resides in the State or Tribe to conserve the gray wolf throughout the geographical range of all experimental populations within the State or within the Tribal reservation.

(B) That the State or Tribe has an acceptable conservation program for the gray wolf, throughout all of the NEP areas within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program.

(C) A description of exactly what parts of the approved State or Tribal

plan the State or Tribe intends to implement within the framework of this rule.

(D) A description of the State or Tribal management progress will be reported to the Service on at least an annual basis so the Service can determine if State or Tribal management has maintained the wolf population above recovery levels and was conducted in full compliance with this rule.

(ii) The Secretary will approve such a petition upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the endangered gray wolf, as defined in § 17.11(h).

(iii) If the Secretary approves the petition, the Secretary will enter into an MOA with the Governor of that State or appropriate Tribal representative.

(iv) An MOA for State or Tribal management as provided in this section may allow a State or Tribe to become designated agents and lead management of nonessential experimental gray wolf populations within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan approved by the Service, except that:

(A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule;

(B) The MOA cannot vest the State or Tribe with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing);

(C) The MOA may not provide for public hunting or trapping absent a finding by the Secretary of an extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved; and

(D) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest a State with the authority to issue written authorizations for wolf take on reservations. The Service will retain the authority to issue these written authorizations until a Tribal wolf management plan is approved.

(v) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.

(vi) The MOA may not authorize wolf take beyond that stated in the experimental population rules but may be more restrictive.

(vii) The MOA will expressly provide that the results of implementing the MOA may be the basis upon which State or Tribal regulatory measures will be judged for delisting purposes.

(viii) The authority for the MOA will be the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and any applicable treaty.

(ix) In order for the MOA to remain in effect, the Secretary must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the endangered gray wolf as defined in § 17.11(h). The Secretary or State or Tribe may terminate the MOA upon 90 days notice if:

(A) Management under the MOA is likely to jeopardize the continued existence of the endangered gray wolf as defined in § 17.11(h); or

(B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan; or

(C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is not warranted; or

(D) The States or Tribes determine that they no longer want the wolf management authority vested in them by the Secretary in the MOA.

* * * * *

■ 5. Amend § 17.95(a) by adding an entry for ''Gray Wolf (Canis lupus)'' in the same alphabetical order in which this species appears in the table in § 17.11(h) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Gray Wolf (*Canis lupus*)

Michigan. Isle Royale National Park.

Minnesota. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(l).

* * * * *

Dated: December 4, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–29265 Filed 12–10–08; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 73, No. 239
Thursday, December 11, 2008

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5, Appendix C

[Docket No. DHS–2008–0180]

Privacy Act of 1974: Implementation of Exemptions; United States Immigration and Customs Enforcement External Investigations

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 United States Immigration and Customs Enforcement (ICE) External Investigations 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. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed.

DATES: Comments must be received on or before January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0180, 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 please contact: Lyn Rahilly, Privacy Officer (202–732–3300), Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: *ICEPrivacy@dhs.gov*. For privacy issues, please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

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), DHS/ICE has relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records pertaining to law enforcement investigations performed by ICE. The External Investigations records system will also cover ICE records that are presently maintained in Treasury Enforcement Communications System (TECS), a computerized information system. ICE uses an electronic case management component in TECS to store and manage law enforcement investigative records. These records contain investigative case files and other information associated with ongoing and closed ICE investigations into suspected violations of laws and regulations governing the movement of people and goods into and out of the U.S. and other laws within ICE's jurisdiction.

In this notice of proposed rulemaking, DHS is now proposing to exempt External Investigations, 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 External Investigations. Some information in External Investigations relates to official DHS national security, law enforcement, immigration, and intelligence activities. 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's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. 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 External Investigations 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: 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. 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 ''14'':

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

* * * * *

14. The DHS/ICE Enforcement External Investigations system of records consists of electronic and paper records and will be used by DHS and its components. External Investigations 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; and national security and intelligence activities. External Investigations 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),and (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act, 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) 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) and (H) (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: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29394 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket Number DHS–2008–0122]

Privacy Act of 1974: Implementation of Exemptions; United States Coast Guard Notice of Arrival and Departure System

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is proposing to amend its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, the Department proposes to

exempt portions of the United States Coast Guard Notice of Arrival and Departure System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Written comments and related material must be submitted on or before January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0122 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.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202–475–3521), United States Coast Guard Privacy Officer, United States Coast Guard. For 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

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records for Notice of Arrival and Departure (NOAD). This information is maintained within the Ship Arrival Notification System (SANS), as well as other USCG systems charged with screening and vetting of vessels, primarily, but not exclusively, through Marine Information for Safety and Law Enforcement (MISLE, DOT/CG 679, April 11, 2002, 67 FR 19612) and the Maritime Awareness Global Network (MAGNet, DHS/USCG–061, May 15, 2008, 73 FR 28143). SANS retrieves information by vessel and not by a personal identifier; however, USCG uses the information in other systems to conduct screening and vetting pursuant to its mission for protecting and securing the maritime sector.

The information that is required to be collected and submitted through Electronic Notice of Arrival and Departure (eNOAD) can be found on routine arrival/departure documents that passengers and crewmembers must provide to DHS, when entering or departing the United States.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS would also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS would add these exemptions to Appendix C to 6 CFR Part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information. The exemptions proposed here are standard law enforcement exemptions exercised by a large number of federal law enforcement agencies.

Nonetheless, DHS would examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

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 proposed rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this proposed 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 proposed 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 proposed rule would not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would 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 proposed 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 proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend 6 CFR chapter I 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. Subpart B also issued under 5 U.S.C. 552a.

2. At the end of Appendix C to Part 5, add the following new paragraph 14:

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

* * * * *

14. DHS/USCG–029, Notice of Arrival and Departure Information. A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g); however, these exemptions apply only to the extent that information in this system of records is recompiled or is created from information contained in other systems of records subject to such exemptions pursuant to 5 U.S.C. 552a(j)(2),and (k)(2). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because portions of this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to the record, should not apply.

(c) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement, counterterrorism, and investigatory records. Compliance with these provisions could alert the subject of an investigation to the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to law enforcement, including matters bearing on national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism or law enforcement investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) (Relevancy and Necessity of Information) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete screening of passengers and crew. Information relating to known or suspected terrorists is not always collected in a manner that permits immediate verification or determination of relevancy to a DHS purpose. For example, during the early stages of an investigation, it may not be possible to determine the immediate relevancy of information that is collected—only upon later evaluation or association with further information, obtained subsequently, may it be possible to establish particular relevance to a law enforcement program. Lastly, this exemption is required because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(f) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

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

(h) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other systems of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(i) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(k) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29285 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 93–177; FCC 08–228]

An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission requests comment on proposed new rules to protect AM stations from the potential effects of nearby tower construction. The Commission seeks comment on new rules that consolidate disparate rules in separate sections regarding tower construction near AM stations, and also update these rules by incorporating computer modeling techniques.

DATES: Submit comments on or before January 12, 2009 and reply comments on or before February 9, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, *http://www.fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Audio Division, Media Bureau (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rule Making* (*Second FNPRM*) in MM Docket No. 93–177, adopted September 24, 2008, and released September 26, 2008. The Commission adopted the Second FNPRM in response to comments received regarding an earlier *Further Notice of Proposed Rule Making* (FNPRM) in this proceeding [*See* 66 FR 20779, April 25, 2001]. The complete text of this *Second FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., (800) 378–3160, 445 12th Street, SW., Room CY–402, Washington, DC 20554. The complete text is also available on the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-228A1.pdf*.

Synopsis of Second Further Notice of Proposed Rule Making

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Thus, our rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, §§ 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lack provisions for protecting AM stations from possible effects of nearby tower construction. An *ad hoc* coalition of radio broadcasters, equipment manufacturers, and broadcast consulting engineers (''the Coalition'') has proposed that the Commission adopt rules to ''harmonize the disparate treatment'' regarding tower construction near AM stations, and also to incorporate moment method techniques in the analysis of the impact of nearby structures on the AM station.

Existing AM proximity rules governing wireless licensees specify fixed distances within which tower construction is presumed to affect the AM station. The Coalition's proposal, in contrast, would specify critical distances from an AM station in terms of wavelengths at the AM frequency, albeit limiting the distance to a maximum of three kilometers, as specified in existing rules for wireless licensees. The Coalition's proposal designates moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The proposal would, however, allow traditional partial proof measurements taken before and after tower construction as an alternative procedure when the AM station in question was licensed pursuant to field strength measurements. The Coalition proposes to eliminate short towers from consideration, with critical tower heights also defined in terms of the AM wavelength. Existing rules apply to modification of towers, as well as to new tower construction near AM stations. The Coalition's proposal would define the types of tower modification that may affect AM stations, and would exclude many routine cases in which antennas are added to existing towers.

The *Second FNPRM* seeks comment on proposed new rules based on those suggested by the Coalition, and on the types of towers to which the new rules would apply. Specifically, the *Second FNPRM* asks whether the new rules should apply to all towers, including structures that are not otherwise subject to Commission licensing processes, i.e., with regard to structures such as towers that do not require registration and which no Commission licensee or applicant uses or proposes to use. The *Second FNPRM* seeks comment on a number of issues that could establish limits on the scope of the new rules, and the technical and/or policy grounds for such limits. For example, the *Second FNPRM* requests comment on the criteria used for the exclusion of short towers, and on the incorporation in the new rule of a provision requiring tower proponents to protect the AM station upon submission of a credible demonstration that the tower affects the AM pattern.

Paperwork Reduction Act Analysis

This document contained proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due February 9, 2009. Comments should address: (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 estimates; (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 information collection techniques or other forms of information technology. The information collection will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 202, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Sections 1.30002 and 1.30003, Disturbance of AM Broadcast Station Antenna Patterns.

Form Number: Not applicable.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 1,040 respondents; 1,040 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,670 hours.

Total Annual Cost: $601,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On September 24, 2008, the Commission adopted the Second Report and Order and Second Further Notice of Proposed Rulemaking in the matter of An Inquiry into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 08–228. The Second Further Notice of Proposed Rulemaking proposes new rules concerning tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Thus, our rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lack provisions for protecting AM stations from possible effects of nearby tower construction. The proposed new rules would consolidate existing rules regarding tower construction near AM stations, and would also incorporate moment method techniques in the analysis of the impact of nearby structures on the AM station.

The Commission proposes information collection requirements as follows:

47 CFR 1.30002(a) requires a proponent of construction or alteration of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the construction or alteration. If the tower construction or alteration would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or alteration of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the construction or alteration. If the tower construction or alteration would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with the filing of any license application covering a broadcast station installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both prior to the commencement of construction and upon completion of construction to establish that the AM array has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any broadcast license application associated with the installation.

Comments on the PRA information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov* or *Cathy.Williams@fcc.gov*, and to Nicholas A. Fraser, Office of Management and Budget (OMB), Desk Office via the Internet to *Nicholas_A._Fraser@omb.eop.gov*, or via fax at (202) 395–5167.

Supplementary Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, as amended (''RFA''),[1] the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the *Second FNPRM*. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadline for comments on the *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[2]

Need For and Objectives of the Proposed Rules

In May 2007, a coalition of broadcasters, consulting engineers, and equipment manufacturers (''Coalition'') submitted a proposal that the Commission update and consolidate its disparate rule sections concerning tower construction near AM stations. The Coalition's proposed new rules for tower construction near AM stations would also incorporate moment method modeling techniques similar to those proposed for AM proofs of performance. The proposed rules regarding tower construction near AM stations, which would apply to all Commission licensees who construct towers, would simplify procedures and reduce costs. The *Second FNPRM* seeks additional comment on these proposed rules.

Legal Basis

This Notice is adopted pursuant to Sections 4(i), 303, 612, and 616 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532 and 536.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under Section 3 of the Small Business Act.[4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[7] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[9] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[12] Thus, we estimate that most governmental jurisdictions are small.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[13] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.''[14] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[15] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[16] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[17] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[18] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[19] Thus, we estimate that the majority of wireless firms are small.

Non-Licensee Tower Owners. Many communications towers, while used to support multiple antennas for Commission licensees in various services, are owned by entities which are not themselves Commission licensees. Thus, non-licensee tower owners may be subject to any new or additional requirements adopted in this proceeding. Communications towers fall into two categories: Those requiring antenna structure registration, and those exempt from registration. The Commission's rules require that any entity proposing to construct an antenna structure over 200 feet or within the glide slope of an airport must register the antenna structure with the

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

[4] *Id.* section 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies, ''unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of the term where appropriate to the activities of the agency and publishes the definition(s) in the **Federal Register**.''

[5] *Id.*

[6] 15 U.S.C. 632.

[7] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[8] 5 U.S.C. 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[12] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[14] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[15] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[16] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[17] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[19] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

Commission on FCC Form 854.[20] As of September 3, 2008, there were 97,617 registration records in a 'Constructed' status and 13,047 registration records in a 'Granted, Not Constructed' status in the Antenna Structure Registration (ASR) database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[21] Regarding towers that do not require antenna structure registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed new rules. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.[22]

Radio Broadcasting. The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business.[23] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of May 1, 2008, 13,457 (about 96 percent) of 13,977 radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations[24] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

FM Translator Stations and Low Power FM Stations. The proposed rule could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts.[25] Currently, there are approximately 5904 licensed FM translator and booster stations and 831 licensed LPFM stations.[26] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

Television Broadcasting. The proposed rule could affect licensees of full power, low power, and television translator stations, as well as potential licensees in these services. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.''[27] According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of May 1, 2008, 1,350 (about 77 percent) of the 1,759 full power television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations[28] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the attribution rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies. Currently, there are approximately 4,271 licensed TV translator and booster stations, 556 Class A television stations, and 2,295 licensed LPTV stations.[29] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

[20] 47 CFR 17.4(a), 17.7(a).

[21] We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[22] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212. Under this category, a business is small if it has 1,500 or fewer employees.

[23] *See* NAICS Code 515112.

[24] ''[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[25] *See* 13 CFR 121.201, NAICS Code 515112.

[26] *See News Release,* ''Broadcast Station Totals as of December 31, 2007'' (rel. March 18, 2008) (''*Broadcast Station Totals*'') (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280836A1.doc*).

[27] OMB, North American Industry Classification System: United States, 1997, at 508–09 (1997) (NAICS Code 51320 which was changed to 51520 in October 2002). This category description continues, ''These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in produced programming. *See id.* at 502–505, NAICS code 512110. Motion Picture and Video Production; Code 512120, Motion Picture and Video Distribution, code 512191, 19 FCC Rcd 15238 (2004). Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[28] ''[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[29] *See Broadcast Station Totals.*

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Second FNPRM* seeks comment on proposed rules that, if adopted and implemented, may affect compliance requirements for small entities. As noted above, we invite small entities to comment in response to the proposed rules. Specifically, the *Second FNPRM* seeks comment on the use of moment method modeling techniques to assess the effect of nearby towers on AM radio stations. In AM radio, the tower itself functions as the antenna. Consequently, a communications tower erected near an AM station may inadvertently become part of the AM antenna system, distorting the authorized AM pattern. The *Second FNPRM* seeks comment on new rules which would consolidate the disparate rule sections currently in place, simplify the requirements of existing rules, and extend the rule to all Commission licensees constructing towers.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:

The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[30]

As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above.[31] The *Second FNPRM* seeks comment on a new method of assessing the effects of nearby tower construction on AM stations. We tentatively conclude that adoption of these proposed rules would reduce the compliance burden on most Commission licensees, and that this reduction would be particularly beneficial to small entities. We invite commenters to propose steps that the Commission may take to minimize any significant economic impact on small entities.

[30] 5 U.S.C. 603(c).

[31] 5 U.S.C. 603(b).

The Commission will send a copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking,* including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking,* including the FRFA (or summaries thereof), will also be published in the **Federal Register**.[32]

List of Subjects in 47 CFR Part 1

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 1 of title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Subpart AA is added to part 1 to read as follows:

Subpart AA—Disturbance of AM Broadcast Station Antenna Patterns

Sec.

§ 1.30000 Purpose.

This rule part protects the operations of AM broadcast stations from nearby tower construction which may distort the AM antenna pattern. All parties proposing to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or proposing to install an antenna on an AM tower, are responsible for measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occurred as a result of the tower construction or modification.

§ 1.30001 Definitions.

For purposes of this subpart:

(a) *Wavelength at the AM frequency.* In this subpart, critical distances from an AM station are described in terms of the AM wavelength. The AM wavelength, expressed in meters, is computed as follows:

(300 meters)/(AM frequency in megahertz) = AM wavelength in meters.

For example, at the AM frequency of 1000 kHz, or 1 MHz, the wavelength is (300/1 MHz) = 300 meters.

(b) *Electrical degrees at the AM frequency.* This term describes the height of a proposed tower as a function of the frequency of a nearby AM station. To compute tower height in electrical degrees, first determine the AM wavelength in meters as described in paragraph (a) of this section. Tower height in electrical degrees is computed as follows:

[(Tower height in meters)/AM wavelength in meters)] × 360 degrees = Tower height in electrical degrees.

For example, if the AM frequency is 1000 kHz, then the wavelength is 300 meters, per paragraph (a) of this section. A nearby tower 75 meters tall is therefore [75/300] × 360 = 90 electrical degrees tall at the AM frequency.

(c) *Proponent.* The term proponent refers in this section to the party proposing tower construction or modification.

§ 1.30002 Tower construction or modification near AM stations.

(a) *Construction near a nondirectional AM station.* Proponents of construction or significant modification of a tower which is within one wavelength of the AM station, and is taller than 60 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would distort the radiation pattern by more than 2 dB, the licensee shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the nondirectional antenna.

(b) *Construction near a directional AM station.* Proponents of the construction or significant modification of a tower which is within the lesser of 10 wavelengths or 3 kilometers of the AM station, and is taller than 36 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would result in radiation in excess of the AM station's licensed standard pattern or augmented standard pattern values, the licensee shall be

[32] *See* 5 U.S.C. 604(b).

responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the directional antenna.

(c) Proponents of construction or significant modification of a tower within the distances defined in paragraphs (a) and (b) of this section of an AM station shall examine the potential effects thereof using a moment method analysis. The moment method analysis shall consist of a model of the AM antenna together with the potential reradiating tower in a lossless environment. The model shall employ a simplified version of the methodology specified in § 73.151(c) of this chapter. The AM antenna elements may be modeled as a series of thin wires driven to produce the required radiation pattern, without any requirement for measurement of tower impedances.

(d) A significant modification of a tower in the immediate vicinity of an AM station is defined as follows:

(1) Any change that would alter the structure's physical height by 5 electrical degrees or more at the AM frequency.

(2) The addition of one or more antennas or a transmission line to a tower that has been detuned or base-insulated.

(e) The addition or modification of an antenna or antenna supporting structure on a building shall not be considered significant.

(f) With respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in paragraph (c) of this section, demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 of this chapter to establish that the licensed radiation limit on the applicable radial is not exceeded.

(g) Tower construction or modification that falls outside the criteria described in the preceding paragraphs is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth above. In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

§ 1.30003 Installations on an AM antenna.

(a) *Installations on a nondirectional AM tower.* When antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51 of this chapter). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with the filing of any license application covering a broadcast station installation.

(b) *Installations on a directional AM array.* Before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51 of this chapter) and request special temporary authority pursuant to § 73.1635 of this chapter to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. For AM stations licensed via field strength measurements (see § 73.151(a) of this chapter), a partial proof of performance (as defined by § 73.154 of this chapter) shall be conducted both prior to the commencement of construction and upon completion of construction to establish that the AM array has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c) of this chapter), the proof procedures set forth in § 73.151(c) of this chapter shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any broadcast license application associated with the installation.

[FR Doc. E8–29367 Filed 12–10–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2571; MB Docket No. 08–233; RM–11505]

Television Broadcasting Services; Waco, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Comcorp of Texas License Corp. (''Comcorp''), the permittee of KWKT–DT, post-transition DTV channel 44, Waco, Texas. Comcorp requests the substitution of DTV channel 25 for post-transition DTV channel 44 at Waco.

DATES: Comments must be filed on or before January 12, 2009, and reply comments on or before January 26, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kevin P. Latek, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–233, adopted November 25, 2008, and released November 26, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432

(TTY). 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

Television, Television 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.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel 25 and removing DTV channel 44 at Waco.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–29372 Filed 12–10–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–AW61

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Extension of comment period and change of public hearing date and time.

SUMMARY: In order to provide additional time and opportunities for highly migratory species (HMS) constituents, and other interested parties to comment on the proposed rule published on November 18, 2008 (73 FR 68398), to adjust the 2008 North and South Atlantic swordfish commercial quotas and modify the vessel chartering regulations, NMFS is extending the proposed rule comment period for this action from December 18, 2008, to January 16, 2009. NMFS is also changing the date and time of the December 16, 2008, public hearing scheduled for Gloucester, MA, to January 15, 2009.

DATES: Comments on the proposed rule must be received no later than 5:00 p.m. on January 16, 2009.

The new Gloucester, MA, public hearing date and time is January 15, 2009, from 3:00 — 5:00 p.m.

ADDRESSES: You may submit comments, identified by [0648–AW61], by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*

• Fax: 301–713–1917, Attn: LeAnn Southward Hogan

• Mail: NMFS SF1, 1315 East–West Highway, Silver Spring, MD 20910

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

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

Copies of the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Consolidated Atlantic HMS Fishery Management Plan (FMP) are available from the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing location is: National Oceanic and Atmospheric Administration, National Marine Fisheries Service Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: LeAnn Southward Hogan or Karyl Brewster–Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq*. Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

On November 18, 2008 (73 FR 68398), NMFS published a proposed rule, requested comments on the adjustment of the 2008 swordfish quotas and modifications to the vessel chartering regulations, and scheduled two public hearings in December 2008 to receive comments from fishery participants and other members of the public regarding the proposed rule. The original comment period was scheduled to conclude on December 18, 2008, and the Gloucester, MA public hearing was scheduled for December 16, 2008. Due to requests from HMS fishery constituents, in order to provide additional time and opportunities for public comment by HMS constituents, NMFS is extending the public comment period on the proposed rule to 5 p.m., January 16, 2009, and changing the date of the Gloucester, MA public hearing to January 15, 2009 from 3:00 — 5:00 p.m.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: December 5, 2008.

Emily H. Menashes,

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

[FR Doc. E8–29377 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 239

Thursday, December 11, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. Fishermen Fishing in Russian Waters.

OMB Control Number: 0648–0228.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours per Response: 1.

Needs and Uses: United States (U.S.) fishermen who wish to fish in the Russian Federation Economic Zone may apply for a Russian Permit by submitting application information to the National Marine Fisheries Service for transmittal to Russian authorities. The permit holders must provide information regarding their permits and must report when entering or leaving the U.S. Exclusive Economic Zone. Regulations at 50 CFR Part 300 Subpart J apply.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–29275 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

OMB Control Number: 0648–0293.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 180.

Number of Respondents: 800.

Average Hours per Response: Initial applications, 15 minutes; and renewals, 9 minutes.

Needs and Uses: The Marine Mammal Protection Act requires any commercial fisher operating in Category I and II fisheries to register for a certificate of authorization that will allow the fisher to take marine mammals incidentals to commercial fishing operations. Category I and II fisheries are those identified by NOAA as having either frequent or occasional takings of marine mammals.

Some states have integrated the National Marine Fisheries Service (NMFS) registration process into the existing state fishery registration process and fishers in those fisheries do not need to file a separate Federal registration. If applicable, vessel owners will be notified of this simplified registration process when they apply for their state or Federal permit or license.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–29282 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NMFS Alaska Region Observer Providers.

OMB Control Number: 0648–0318.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 875.

Number of Respondents: 15.

Average Hours per Response: 30 minutes for industry request for assistance in improving observer data quality issues; 60 hours for new permit application for observer provider; 15 minutes for update to provider information and for observer candidates' college transcripts and disclosure statements; 5 minutes for notification of observer physical examination, observer provider; 7 minutes for projected observer assignment; 7 minutes for briefing registration and for debriefing registration; 12 minutes for certificate of insurance; 15 minutes for copies of contracts; 7 minutes for weekly

deployment/logistics reports; 2 hours for reports of problems; and 4 hours for permit appeal.

Needs and Uses: The National Marine Fisheries Service (NMFS) North Pacific Groundfish Observer Program was implemented in early 1990. The observers in this Program collect and disseminate catch, bycatch, and biological data necessary to support in-season monitoring and stock assessment. Alaska Fisheries Science Center in Seattle, Washington provides the operational oversight of the Program, certification training, definition of observer sampling duties and methods, debriefing of observers, and management of the data. Owners of vessels, shoreside processors, or stationary floating processors required to carry observers must arrange for observer services from an observer provider.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–29289 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 0811171463–81465–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey (ARTS). The Census Bureau has determined to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, total operating expenses, purchases, accounts receivables, and for select industries, merchandise line sales and percent of sales by class of customer. The ARTS was not conducted in 2007 because these data were collected by the 2007 Economic Census—a detailed portrait of the Nation's economy conducted once every five years, from the national to the local level.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Daniel Wellwood, Service Sector Statistics Division, at (301) 763–6816, or by e-mail at *daniel.wellwood@census.gov.*

SUPPLEMENTARY INFORMATION: The ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, e-commerce sales, purchases, and year-end inventories for 2008. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2008 ARTS. We will furnish report forms to the firms covered by this survey and will require their submissions within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys that are necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), Sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. For 2008, the survey will, as it has in the past, operate as a separate sample of retail companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 5, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–29281 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[T–4–2008]

Foreign-Trade Zone 267—Fargo, ND, Temporary/Interim Manufacturing Authority, CNH America, LLC (Construction Equipment); Notice of Approval

On September 30, 2008, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Fargo Municipal Airport Authority, grantee of FTZ 267, requesting temporary/interim manufacturing (T/IM) authority, on behalf of CNH America, LLC, to manufacture wheel loaders under FTZ procedures within FTZ 267—Site 2, in Fargo, North Dakota.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06), including notice in the **Federal Register** inviting public comment (73 FR 60237, 10/10/08). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until December 4, 2010, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: December 4, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–29373 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2008]

Foreign-Trade Zone 242—Boundary County, ID; Application for Subzone; Hoku Materials, Inc.; Notice of Public Hearing and Extension of Comment Period

Pursuant to a timely request from a directly affected party showing good cause (15 CFR 400.51(b)), a public hearing will be held on the application for subzone status at the Hoku Materials, Inc., facility in Pocatello, Idaho, submitted by Boundary County, Idaho, grantee of Foreign-Trade Zone 242 (73 FR 59597, 10/9/08). The public hearing will take place on January 8, 2009, at 2 p.m., at the U.S. Department of Commerce, Room 4830, 1401 Constitution Ave., NW., Washington, DC. Interested parties should indicate their intent to participate in the hearing and provide a summary of their remarks no later than January 6, 2009.

Pursuant to 15 CFR 400.27(c)(2), the comment period for this case is being extended to January 23, 2009. Rebuttal comments may be submitted during the subsequent 15-day period, until February 9, 2009. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230.

For further information, contact Diane Finver at *Diane_Finver@ita.doc.gov* or (202) 482–1367.

Dated: December 5, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–29387 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Galaxy Aviation Trade Company Ltd; Hooshang Seddigh; Hamid Shakeri Hendi; Hussein Jahan Payma; Iran Air; Dunyaya Bakis Hava Tasimaciligi A.S.; Yavuz Cizmeci; Sam David Mahjoobi; Intelligent Aviation Services Ltd.

In the Matter of:

Galaxy Aviation Trade Company Ltd., 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK NW2 2PJ;

Hooshang Seddigh, 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ;

Hamid Shaken Hendi, 5th Floor, 23 Nafisi Avenue, Shabrak Ekbatan, Karaj Special Road, Tehran, Iran;

Hossein Jahan Peyma, 2/1 Makran Cross, Heravi Square, Moghan Ave, Pasdaran Cross, Tehran, Iran;

Iran Air, Second Floor, No. 23 Nafisi Avenue, Ekbatan, Tehran, Iran;

Dunyaya Bakis Hava Tasimaciligi A.S., a/k/a Dunyaya Bakis Air Transportation Inc. d/b/a Ankair, Yesilkoy Asfalti Istanbul No. 13/4, Florya, Istanbul, Turkey TR–34810; Respondents; and

Yavuz Cizmeci, Chief Executive Officer, Ankair, Yesilkoy Asfalti Istanbul No. 13/4, Florya, Istanbul, Turkey TR–34810.

Sam David Mahjoobi, 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom RG7 8NN.

Intelligent Aviation Services Ltd., 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom RG7 8NN; Related Persons; Order Renewing Order Temporarily Denying Export Privileges and also Making that Temporary Denial of Export Privileges Applicable to Related Persons.

Pursuant to sections 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2008) (''EAR'' or the ''Regulations''), I hereby grant the request of the Bureau of Industry and Security (''BIS'') to renew for 180 days the Order Temporarily Denying the Export Privileges (''TDO'') of Respondents Galaxy Aviation Trade Company Ltd., Hooshang Seddigh, Hamid Shaken Hendi, Hossein Jahan Peyma, Iran Air, and Ankair.[1] Based on the record, I find that BIS has met its burden under Section 766.24 and that renewal of the TDO is necessary and in the public interest to prevent an imminent violation of the EAR.

Additionally, after having been given notice and an opportunity to respond in accordance with Section 766.23 of the Regulations, I find it necessary to add the following entities as Related Persons:

Yavuz Cizmeci, Chief Executive Officer, Ankair, Yesilkoy Asfalti Istanbul No. 13/4, Florya, Istanbul, Turkey TR–34810.

Sam David Mahjoobi, 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom RG7 8NN.

Intelligent Aviation Services Ltd., 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom RG7 8NN.

I. Factual Background

Based upon evidence submitted by BIS through its Office of Export Enforcement (''OEE''), I issued an Order on June 6, 2008, which was effective immediately and temporarily denied for 180 days the export privileges of the Galaxy Aviation Trade Company Ltd. (''Galaxy Aviation''), Hooshang Seddigh, Hamid Shaken Hendi, Hossein Jahan Peyma, as well as of Iran Air of Tehran, Iran, and Ankair of Istanbul, Turkey. Based on additional evidence submitted by BIS, on July 10, 2008, I issued a modified Order expanding the scope of the denial as to Respondent Ankair.[2] The TDO and modified TDO were published in the **Federal Register** on, respectively, June 17 and July 22, 2008.[3]

On July 22, 2008, BIS notified Yavuz Cizmeci, that it intended to add him as a Related Person to the TDO based on his position as Chief Executive Officer and a shareholder of Ankair in accordance with Section 766.23 of the Regulations. Mr. Cizmeci submitted a response through counsel opposing his addition to the TDO as a Related Person.

On August 27, 2008, Respondent Galaxy Aviation, along with Respondents Hooshang Seddigh, Hamid Shaken Hendi, and Hossein Jahan Peyma, filed an appeal of the TDO with an administrative law judge (''AU'') pursuant to Section 766.24(e)(1)(i). In a one-page, unsworn letter, Galaxy Aviation and its shareholders claimed not to be involved in the reexport of the Boeing 747 as alleged by BIS. In a recommended decision dated September 16, 2008, the AU recommended that Respondents' motion be denied and that the TDO remain in effect in order to prevent future

[1] Evidence presented by Ankair shows that its legal corporate name is Dunyaya Bakis Hava Tasimaciligi AS., a/k/a Dunyaya Bakis Air Transportation Inc. (''DBHT''). DBHT is doing business as Ankair and therefore this order modifies Ankair's listing to properly reflect this information.

[2] The original order only denied Ankair's export privileges involving Boeing 747, tail number TC–AKZ and manufacturer's serial number 24134. The modified Order expanded the scope of Ankair's denial to include all items subject to the Regulations.

[3] 73 FR 34,249 (June 17, 2008); 73 FR 42,544 (July 22, 2008). On June 7, 2008, a copy of the TDO was provided to the Turkish Ministry of Foreign Affairs for service on Ankair. An additional copy was sent to Ankair by Federal Express on June 10, 2008.

violations of the Regulations. The Under Secretary of Commerce for Industry and Security affirmed the AU's recommended decision, thereby keeping the TDO in full effect, in an Order dated September 19, 2008, in accordance with Section 766.24(e)(5). See 73 FR 59,599 (October 9, 2008).

On November 6, 2008, Sam David Mahjoobi and Intelligent Aviation Services Ltd. (''Intelligent Aviation'') were sent letters in accordance with 766.23 notifying them of BIS's intent to add them as related persons to the TDO based on their relationship to Galaxy Aviation and involvement in the sale and reexport of the Boeing 747 at issue in this matter.

Neither Mahjoobi nor Intelligent Aviation submitted any opposition to their proposed addition to the TDO.

On November 13, 2008, BIS, through OEE, filed a written request for renewal of the TDO against the Respondents for an additional 180 days and served a copy of its request on each of the Respondents. BIS's renewal request is part of the record here and requests that the TDO be renewed based on evidence that renewal of the TDO is necessary in the public interest to prevent imminent violations, as demonstrated, in sum, by past unlicensed reexports of U.S.-origin aircraft by Ankair (then doing business as World Focus Airlines) to Iran Air Tours, the re-export to Iran in violation of the TDO and the Regulations of the U.S.-origin Boeing 747, tail number TC–AKZ and manufacturer's serial number 24134, identified in the TDO on June 6, 2008, and Ankair's possession or control of two additional U.S.-origin MD–80 aircraft that had or were about to be diverted via re-export to Fars Air Qeshm, an Iranian airline.

Respondent Ankair filed a written submission dated November 26, 2008, opposing renewal of the TDO and requesting a hearing pursuant to Section 766.24(3).[4] I granted Ankair's request and held a hearing on December 2, 2008, which consisted of oral arguments by Ankair and BIS, including responses by counsel for Ankair and BIS to questions that I posed during the hearing. Respondent's written submission, which also is of record here, focused on three main arguments: (1) Documents it presented which purport to show a sales agreement for the Boeing 747 identified in the TDO between Ankair and Sam David Mahjoobi, along with delivery and acceptance certificates provided by Ankair and Mahjoobi, dated prior to the issuance of the TDO on June 6, 2008; (2) arguments that Ankair understood that the 747 would be re-exported to Pakistan, rather than Iran, and that BIS had not presented evidence that it had re-exported the aircraft to Iran; and (3) one of the MD–80 aircraft of concern to BIS has already been sold and was no longer in Ankair's possession or control and the second MD–80 has been grounded in Turkey and according to Ankair will remain there.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR as the term ''imminent'' violation is defined in section 766.24.

With regard to whether a violation may be ''imminent,'' the Regulations provide that:

A violation may be 'imminent' either in time or in degree of likelihood. To establish grounds for the temporary denial order, BIS may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BIS may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

Id.

Thus, a violation may be imminent either in proximity of time or degree of likelihood, and the time of a future violation need not be established; rather, imminence may be established if there is evidence indicating that there is sufficient reason to believe that a future violation or violations are likely to occur. BIS may therefore show that a violation is about to occur or that the facts and circumstances of the matter under investigation demonstrate a reasonable belief in the likelihood of future violations.[5] Consequently, TDO may be issued and maintained in force, when, as in this case, matter is still under investigation by BIS.

B. Analysis and Findings

BIS submitted evidence with its renewal request, as it had previously in connection with the issuance of the TDO and the modification of the TDO as to Ankair, as well as in response to Galaxy Aviation's appeal, which shows (absent rebuttal) that the TDO is and remains necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder.[6] Ankair's opposition, as filed on November 26, 2008, and as supplemented through its counsel at the hearing on December 2, 2008, fails to rebut BIS's showing. In fact, BIS's showing has, if anything, become even more compelling as its investigation has continued.

Ankair's efforts to rebut BIS's renewal request relies first and foremost on contractual documents proffered in an effort to establish an alternative ''timeline'' that Ankair asserts shows that the sale of the Boeing 747 occurred by May 30, 2008, pursuant to a contract dated May 20, 2008, that is, occurred by or on a date prior to the issuance of the TDO on June 6, 2008. However, Ankair's ''timeline'' and related contentions are not supported by any declarations or affidavits or the surrounding chain of events and circumstances. The contract upon which Ankair relies (Exhibit 1 to Ankair's Submission) provided that the delivery period for the plane was June 20–27, 2008. It also is undisputed here that Ankair did not submit a deregistration request to the Turkish Government regarding the 747 until June 26, 2008, nearly three weeks after issuance of the TDO, that the deregistration certificate and the airworthiness certificate were not issued by the Turkish Government until July 27, 2008, and that these actions were necessary steps in the transaction and the re-export of the plane. See Ankair's Submission, Exhibit 1 at section 5.4 (requiring Ankair to deliver a certificate of airworthiness for export and a deregistration certificate from the

[4] Ankair's submission apparently was filed in an untimely fashion. See Section 766.5(e) of the Regulations (under Part 766, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period allowed is seven days or less). Nonetheless, I have considered in full Ankair's opposition and issue this order based on the merits of BIS's renewal request and Ankair's opposition.

[5] 15 CFR 766.24(b)(3).

[6] Ankair was not a party to the appeal of the Galaxy Aviation Respondents, but the evidence discussed there by OEE, the AU, and the Under Secretary for Industry and Security by necessity included evidence relating to Ankair's conduct.

Turkish Government at the time of delivery).

Moreover, it also appears beyond genuine dispute that the 747 was photographed at Tehran airport on June 27, 2008. See BIS Renewal Request Exhibit 12. In addition, Mr. Cizmeci, Ankair's CEO (as well as CEO of at least ACT Airlines), stated on June 6, 2008—to HBK Capital Management, a U.S. company that is a substantial owner of ACT Airlines, which immediately forwarded this statement to BIS—that the 747 was going to be sold to Galaxy. Ankair's contention that a statement that the aircraft was going to be sold to Galaxy did not indicate any present or future intention is without substance or merit, see Ankair's Submission at 12. This evidence standing alone would call into serious question Ankair's alternative timeline. Ankair asserts that this statement may have been miscommunicated or misinterpreted by HBK (and thus not accurately provided to BIS), but Ankair does not substantiate its argument through a rebuttal declaration from Mr. Cizmeci or any other evidence. Ankair notably does not assert that Mr. Cizmeci informed HBK in words or substance on June 6, 2008, that Ankair had sold the 747 to Mr. Mahjoobi and had done so at least a week before, no later than May 30, 2008. If that sale had occurred as asserted by Ankair, then it is difficult to imagine why Mr. Cizmeci would have provided any other response, and clearly the vast differences between a statement that the plane was going to be sold to Galaxy and a statement that it had been sold to Mr. Mahjoobi at least a week or more before cannot be explained by Ankair's posited suggestions of miscommunication or misinterpretation. Furthermore, the statement has additional indicia of reliability as discussed by BIS in its renewal request.

Ankair contends that it sold the plane to an individual named Sam David Mahjoobi. Ankair contended in its submission and (at least initially) at the hearing that Mahjoobi acted individually and not on behalf of Galaxy Aviation. Mr. Mahjoobi is identified at one point in the contract as a ''Director,'' but Ankair asserts that this is simply the inapplicable contract form language and highlights information indicating that Mahjoobi is a director of other U.K. companies, including a U.K. company called Intelligent Aviation Services. Ankair argued that it was entitled to rely on representations of its customer, at least in the absence of red flags, and during the hearing Ankair's counsel referenced Mahjoobi as being a middleman and a possible ''principal'' unknown to Ankair and asserted that such an arrangement would not be unusual, apparently in spite of the fact that the purported transaction involved a jet aircraft with a multi-million dollar value. Most concretely, however, Ankair's counsel indicated at the hearing that Mahjoobi had mentioned Intelligent Aviation to Ankair (rather than mentioning, presumably, Galaxy Aviation). This representation further undermines Ankair's asserted timeline, because Intelligent Aviation did not exist as of a May 30, 2008, and in fact was not formed until June 11, 2008. See Ankair's Submission, at 10. Moreover, as noted by BIS, Mr. Mahjoobi is the one person listed on Galaxy's Aviation's corporate records who was not individually named as a Respondent in the TDO when it issued on June 6, 2008. If as suggested by Mr. Cizmeci's June 6, 2008 statement, the sale had not occurred as of that date, listing any of the Galaxy Aviation Respondents as the counterparty to the sale would have represented a patent violation of the TDO, readily detectable by any government that learned the identity of the parties involved.

In addition, in response to Ankair's submission, BIS presented evidence at the hearing indicating that Ankair did not acquire ownership of the 747 until May 27, 2008, a week after the May 20, 2008 date that Ankair asserts it already had contracted to sell the 747 to Mr. Mahjoobi. Moreover, Ankair's purported final bill of sale to Mahjoobi dated May 30, 2008, would have resulted in a loss to Ankair of more than $5 million on an asset that it would have owned for no more than three days. See Hearing Exhibits 3–4.[7] These documents further call into question Ankair's assertions that this sale was an arms-length transaction that occurred prior to issuance of the TDO.

At the hearing, Ankair's counsel acknowledged that BIS has legitimate questions and concerns about the transaction. Both parties agreed at the hearing that after the issuance of the TDO on June 6, 2008, and after receiving actual and constructive notice of the TDO, that Ankair took actions that enabled the 747 to be re-exported from Turkey. Ankair claims that it believed that the aircraft was destined for Pakistan and that reasonable minds can differ whether its post-TDO conduct constitutes a violation. But the TDO specifically prohibited Ankair from directly or indirectly participating in any way in any transaction involving the 747, a U.S.-origin aircraft that is subject to the Regulations. Thus, even if I were to disregard all of the BIS's evidence that Ankair questions or disputes, the record would show that Ankair knowingly violated the TDO (and thus the Regulations) and provide a sufficient basis to conclude that Ankair is likely to commit future violations absent continuation of the TDO.

I have also considered the evidence and arguments regarding the two MD–80 Aircraft of concern to BIS. The record apparently indicates that one of the aircraft (Tail Number TCAKL) may no longer be in Ankair's control or possession. Assuming this to be true, the remaining MD–80 (tail number TC–AKM) continues to present an imminent risk of diversion via re-export to Iran. In this regard, the suspension of Ankair's operating license by the Turkish authorities increases the likelihood that Ankair will seek to dispose of its interest in this aircraft, as it cannot operate the aircraft, yet must still bear the costs of storing and maintaining it. Ankair's past conduct, including leasing U.S.-origin aircraft to Iran Air Tours in violations of the Regulations and its actions regarding the re-export of the 747, increase the likelihood that this aircraft will be re-exported contrary to U.S. export controls.

In conclusion, I find that BIS has met its burden under Section 766.24 of the Regulations and that it is necessary to renew the TDO against each of the Respondents named in the TDO to prevent further imminent violations of the Regulations. The Order will provide continued notice to companies in the United States and abroad to cease dealing with the Respondents in U.S.-origin items in order to reduce the likelihood that the Respondents, who are still under investigation, will continue to export or acquire such items contrary to export control requirements.

III. Addition of Related Persons

A. Legal Standard

Section 766.23 of the Regulations provides that ''[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the

[7] At the conclusion of the hearing, Ankair requested leave to amend its submission in light of these exhibits. I took that request under advisement and hereby deny it. The exhibits can be considered to be in the nature of rebuttal or impeachment material. They also relate to events known to Ankair and documents or information in Ankair's possession, custody, or control. In addition, having asserted in its submission that it sold the 747 in late May 2008, prior to the issuance of the TDO, and given the record and issues under consideration here, Ankair reasonably could have anticipated that BIS would not only seek to respond to this assertion, but potentially do so with regard to the timing and other details of Ankair's acquisition of the aircraft.

respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders. * * *'' 15 CFR 766.23(a).

B. Analysis and Findings

Yavuz Cizmeci does not argue he is not a related person to Ankair, but instead that his addition is not necessary to prevent evasion of the TDO since he cannot unilaterally make decisions on behalf of Ankair. I find this argument unpersuasive as Yavuz Cizmeci is not only the Chief Executive Officer and a shareholder of Ankair but he had personal knowledge of and involvement in the sales and/or leases of both the 747 and MD–80 aircraft at issue in this case. His role in the conduct of business by Ankair satisfies the requirement of section 766.23 and therefore will be added a Related Person.

On November 6, 2008, Sam David Mahjoobi and Intelligent Aviation Services Ltd. were sent letters in accordance with 766.23 informing them of BIS's intent to add them as related persons to Respondent Galaxy Aviation. Galaxy Aviations' corporate records list Sam David Mahjoobi as a Corporate Officer at all times relevant to this investigation. Additionally, evidence submitted by Ankair indicates that Sam David Mahjoobi signed the contract with Ankair for the 747 at issue in this case. The U.K. corporate records show that Sam David Mahjoobi is also the director of Intelligent Aviation Design, a company formed after the issuance of the initial TDO, and one of the addresses listed on Intelligent Aviation's corporate documents is the same as Galaxy Aviation's London address. Neither Mr. Mahjoobi nor Intelligent Aviation Services submitted a response opposing inclusion as Related Persons. I find based on the record before me that Sam David Mahjoobi and Intelligent Aviation meet the criteria established in section 766.23 and shall be added to this Order as Related Persons.

It is therefore ordered: First, that, Galaxy Aviation Trade Company Ltd., 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ; Hooshang Seddigh, 15 Moreland Court, Lyndale Avenue, Finchley Road, London, UK, NW2 2PJ; Hamid Shaken Hendi, 5th Floor, 23 Nafisi Avenue, Shahrak Ekbatan, Karaj Special Road, Tehran, Iran; Hossein Jahan Peyma, 2/1 Markran Cross, Heravi Square, Moghan Ave, Pasdaran Cross, Tehran, Iran; fran Air, Second Floor, No. 23, Nafisi Avenue, Ekbatan, Tehran, Iran; Dunyaya Bakis Hava Tasimaciligi A.S. a/k/a Dunyaya Bakis Air Transportation Inc. d/b/a Ankair, Yesilkoy Asfalti Istanbul No. 13/4, Florya, Istanbul, Turkey TR–34810; and Fars Air Qeshm, Bahonar Bulv, Qeshm Island, Iran and No. 7, 4th Alley, 2nd Bimeh Street, Karaj Road, Tehran, Iran each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that having been provided notice and opportunity for comment as provided in Section 766.23 of the Regulations Yavuz Cizmeci, Chief Executive Officer, Ankair, Yesilkoy Asfalti Istanbul No. 13/4, Florya, Istanbul, Turkey TR–34810; Sam David Mahjoobi, 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom, RG7 8NIN; and Intelligent Aviation Services Ltd., 5 Jupiter House, Calleva Park Aldermaston, Reading, Berkshire, United Kingdom, RG7 8NN, (each a ''Related Person'' and collectively the ''Related Persons''), have been determined to be related to Respondents Ankair of Istanbul, Turkey and Galaxy Aviation Trade Company Ltd. of the United Kingdom by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order temporarily denying the export privileges of the Respondents applicable to these Related Persons in order to prevent evasion of the Order.

Fourth, that the denial of export privileges described in this Order shall be made applicable to each Related Person, as follows:

I. The Related Person, its successors or assigns, and when acting for or on behalf of the Related Person, its officers, representatives, agents, or employees (collectively, ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any

other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that this Order does not prohibit any export, re-export, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, that in accordance with the provisions of sections 766.24(e) and 766.23(c) of the Regulations, the Respondents or Related Persons may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard AU Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

This Order shall be published in the **Federal Register** and a copy provided to each Respondent and Related Person.

This Order is effective immediately and shall remain in effect for 180 days, unless renewed in accordance with the Regulations.

Entered this 3rd day of December 2008.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E8–29181 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–821]

Antidumping Duty Order: Uncovered Innerspring Units From South Africa

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce and the International Trade Commission, the Department of Commerce is issuing an antidumping duty order on uncovered innerspring units from South Africa.

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

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2008, the Department of Commerce (the Department) published the final determination of sales at less than fair value of uncovered innerspring units from South Africa. See *Notice of Final Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa*, 73 FR 62481 (October 21, 2008). On December 4, 2008, the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of uncovered innerspring units from South Africa (Uncovered Innerspring Units from South Africa and Vietnam, Investigation Nos. 731–TA–1141–1142 (Final), USITC Publication 4051, November 2008).

Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of Order

The merchandise covered by this order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the

merchandise for all relevant entries of uncovered innerspring units from South Africa.

These antidumping duties will be assessed on (1) all entries of uncovered innerspring units from South Africa entered, or withdrawn from the warehouse, for consumption on or after August 6, 2008, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa*, 73 FR 45741 (August 6, 2008) (*Preliminary Determination*), through December 5, 2008, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation, and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**.

The Department will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of uncovered innerspring units from South Africa entered, or withdrawn from the warehouse, for consumption subsequent to December 5, 2008, and through the day preceding the publication of the ITC's notice of final determination in the **Federal Register**. See section 733(d) of the Act.

Effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below, in accordance with section 736(a)(3) of the Act.

Manufacturer or Exporter	Margin (percent)
Bedding Component Manufacturers (Pty) Ltd.	121.39
All Others	121.39

This notice constitutes the antidumping duty order with respect to uncovered innerspring units from South Africa, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–29409 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–803

Antidumping Duty Order: Uncovered Innerspring Units From the Socialist Republic of Vietnam

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce and the International Trade Commission, the Department of Commerce is issuing an antidumping duty order on uncovered innerspring units from the Socialist Republic of Vietnam.

EFFECTIVE DATE: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2008, the Department of Commerce (the ''Department'') published the final determination of sales at less than fair value of uncovered innerspring units from the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008). On December 4, 2008, the International Trade Commission (''ITC'') notified the Department of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the ''Act''), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less–than-fair–value imports of uncovered innerspring units from the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from South Africa and Vietnam*, USITC Pub. 4051, Investigation Nos. 731–TA–1141–1142 (Final) (November 2008).

Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of Order

The merchandise covered by this order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non–pocketed innerspring units are included in this definition. Non–pocketed innersprings are typically joined together with helical wire and border rods. Non–pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.00.70, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of uncovered innerspring units from the Socialist Republic of Vietnam.

These antidumping duties will be assessed on (1) all entries of uncovered innerspring units from the Socialist Republic of Vietnam entered, or withdrawn from the warehouse, for consumption on or after August 6, 2008, the date on which the Department published *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738 (August 6, 2008) (*Preliminary Determination*), through December 5, 2008, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation, and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**.

The Department will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, un–liquidated entries of uncovered innerspring units from the Socialist Republic of Vietnam entered, or withdrawn from the warehouse, for consumption subsequent to December 5, 2008, through the day preceding the publication of the ITC's notice of final determination in the **Federal Register**. See section 733(d) of the Act.

Effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP officers must require, at the same time as importers would normally deposit estimated duties, cash deposits based on the rates listed below, in accordance with section 736(a)(3) of the Act.

Manufacturer/exporter	Margin (percent)
Vietnam-Wide Rate	116.31

This notice constitutes the antidumping duty order with respect to uncovered innerspring units from the Socialist Republic of Vietnam, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–29484 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–848)

Continuation of Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China

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

SUMMARY: As a result of the determinations by the Department of Commerce (Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation for the antidumping duty order.

EFFECTIVE DATE: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5287 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2008, the Department initiated and the ITC instituted the second sunset review of the antidumping duty order on crawfish from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five&year (''Sunset'') Review*, 73 FR 37411 (July 1, 2008); see also *Institution of a Fiv&year Review Concerning the Antidumping Duty Order on Crawfish Tail Meat from China*, 73 FR 37489 (July 1, 2008).

As a result of its review, the Department determined that revocation of the antidumping duty order on crawfish from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Second Expedited Sunset Review of the Antidumping Duty Order*, 73 FR 65832 (November 5, 2008).

On November 25, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on crawfish from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonable foreseeable future. See *Crawfish Tail Meat from China* (Inv. No. 731–TA–752 (Second Review)), USITC Publication 4047 (November 25, 2008); see also *Crawfish Tail Meat from China*, 73 FR 72833 (December 1, 2008).

Scope of Order

The product covered by this antidumping duty order is freshwater crawfish, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United states, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on crawfish from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section

751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–29392 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–863)

Honey From the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review

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

SUMMARY: On November 18, 2008, the United States Court of International Trade (''CIT'') sustained the remand redetermination issued by the Department of Commerce (''Department'') pursuant to the CIT's remand order in the final results of the administrative review of the antidumping duty order on honey from the People's Republic of China. *See Shanghai Eswell Enterprise Co., Ltd., et. al. v. United States*, Court No. 05–00439, Slip Op. 08–124 (CIT November 18, 2008) (''*Eswell II*''). This case arose from the Department's final results for the period of review (''POR'') December 1, 2002, through November 30, 2003. *See Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) (''*Final Results*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that Eswell II is not in harmony with the Department's Final Results.

EFFECTIVE DATE: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION: On September 13, 2007, the CIT remanded the following issues to the Department for further administrative proceedings consistent with its opinion and Order: 1) the calculation of the raw honey surrogate value; 2) the calculation of surrogate financial ratios with respect to (a) the treatment of honey sales commissions and (b) the treatment of jars, corks, and honey machine purchases; and 3) the use of export price sales for Jinfu Trading Co., Ltd.'s (''Jinfu'') U.S. sales. *See Shanghai Eswell Enterprise, Co., Ltd., et. al. v. United States*, Slip Op. 07–138 (CIT September 13, 2007) (''*Eswell I*''), at 17–18. Pursuant to the CIT's remand instructions, we: 1) addressed record evidence which indicated a decline in export prices during the second half of the POR and explained why we have refrained from considering these data in calculating a surrogate value for raw honey; 2) (a) discussed evidence which reflects an exact correlation between the selling commission expenses incurred by respondents, and those incurred by the surrogate financial company and further explained our decision in the *Final Results* that the record evidence was insufficient to permit a circumstances of sale adjustment, as well as (b) revised our financial ratio calculations to include reported expenses for jars and corks as direct materials used for producing finished honey and provided further explanation regarding our finding that honey machine purchases do not constitute direct expenses; and 3) addressed the CIT's findings with respect to operational control, and explained our continued finding, in accordance with our decision in the *Final Results of Redetermination Pursuant to Court Remand: Jinfu Trading Co., Ltd. v. United States*, Court No. 04–00597, Slip Op. 07–95 (CIT June 13, 2007).

On January 15, 2008, the Department released the *Draft Results of Redetermination Pursuant to Court Remand* to interested parties. On January 22 and January 24, 2008, we received comments on the draft results of redetermination from interested parties. On February 11, 2008, the Department filed its final results of redetermination pursuant to *Eswell I* with the CIT. *See Final Results of Redetermination Pursuant to Court Remand: Shanghai Eswell Enterprise Co., Ltd. v. United States*, Court No. 06–00430 (February 11, 2008). In responding to the CIT's questions and reassessing the record evidence, we determined it was appropriate to revise our financial ratio calculations to include, as direct materials used to producing finished honey, expenses for jars and corks. Thus, the Department revised, as appropriate, the surrogate financial ratios of the margin calculations for Eswell Enterprise Co., Ltd., Jinfu and Zhejiang Native Produce and Animal By–Products Import & Export Group Corp. On November 18, 2008, the CIT sustained all aspects of the redetermination made by the Department pursuant to the CIT's remand of the *Final Results*.

In *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision in *Eswell II* on November 18, 2008, constitutes a decision of the court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will publish an amended final results and instruct U.S. Customs and Border Protection to revise the cash deposit rates covering the subject merchandise and to assess antidumping duties on entries of the subject merchandise during the POR based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: December 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–29486 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 7, 2008, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the

Netherlands. *See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 45943 (August 7, 2008) (*Preliminary Results*). The merchandise covered by the order is purified CMC as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is July 1, 2006, through June 30, 2007. In our *Preliminary Results*, we invited parties to comment. We received comments from interested parties and have made no changes to our calculation based on our analysis of the comments received. Therefore, the final results do not differ from those published in the Department's *Preliminary Results*. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

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

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, 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) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2008, the Department published the preliminary results of administrative review of the antidumping duty order covering purified CMC from the Netherlands. *See Preliminary Results.* The parties subject to this review are CP Kelco B.V. and its U.S. affiliates, CP Kelco U.S., Inc. and Huber Engineered Materials (collectively, CP Kelco). The Petitioner in this proceeding is The Aqualon Company, a division of Hercules Incorporated (Petitioner).

We invited interested parties to comment on the *Preliminary Results.* On September 5, 2008, Petitioner filed comments on the *Preliminary Results. See* Letter from Haynes & Boone, LLP, regarding ''Request for a Public Hearing and Comment in Lieu of a Formal Case Brief,'' dated September 5, 2008. CP Kelco did not file a case brief in this proceeding. On September 15, 2008, CP Kelco filed its rebuttal to Petitioner's September 5, 2008, submission. *See* Letter from Arent Fox LLP, regarding ''Rebuttal Brief of CP Kelco BV,'' dated September 15, 2008. On September 11, 2008, Petitioner contacted Department officials and withdrew its request for a public hearing. *See* Memorandum to the File from Robert James, Program Manager, titled, ''Withdrawal of Petitioner's Request for Hearing,'' dated September 11, 2008.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the ''Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands,'' dated December 4, 2008 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room 1117 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Based on our analysis of the comments received from the interested parties, we have made no changes to the margin calculations for CP Kelco from the *Preliminary Results.*

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Weighted average margin (percentage)
CP Kelco B.V.	7.02

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. CP Kelco has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section

751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for CP Kelco will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or previous reviews, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 14.57 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

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

Dated: December 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Comment in the Issues and Decision Memorandum:

Comment 1: Whether to Increase CP Kelco B.V.'s Costs of Production for Shut-down Costs Incurred by its Swedish Affiliate.

[FR Doc. E8–29384 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–808]

Purified Carboxymethylcellulose From Sweden: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 6, 2008, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Sweden. *See Purified Carboxymethylcellulose from Sweden: Preliminary Results of Antidumping Duty Administrative Review,* 73 FR 45703 (August 6, 2008) (*Preliminary Results*). The merchandise covered by this order is purified CMC as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is July 1, 2006, through June 30, 2007. In our *Preliminary Results,* we invited parties to comment. We received comments from interested parties and, consequently, have made changes to our calculation based on our analysis of the comments received. Therefore, the final results differ from those published in the Department's *Preliminary Results.* The final weighted-average dumping margin for the reviewed firm is listed below in the section titled ''Final Results of the Review.''

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

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, 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) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2008, the Department published the preliminary results of administrative review of the antidumping duty order covering purified CMC from Sweden. *See Preliminary Results.* The parties subject to this review are CP Kelco A.B. and its U.S. affiliate, CP Kelco U.S., Inc. (collectively, CP Kelco). The petitioner in this proceeding is The Aqualon Company, a division of Hercules Incorporated (Petitioner).

We invited interested parties to comment on the *Preliminary Results.* On September 5, 2008, Petitioner filed comments on the *Preliminary Results. See* Letter from Haynes & Boone, LLP, regarding ''Request for a Public Hearing and Comment in Lieu of a Formal Case Brief,'' dated September 5, 2008. Also on September 5, 2008, CP Kelco submitted comments on the *Preliminary Results. See* Letter from Arent Fox LLP, regarding ''Comments Regarding August 6, 2008 Preliminary Results of Review,'' dated September 5, 2008. On September 11, 2008, CP Kelco filed its rebuttal to Petitioner's September 5, 2008, submission. *See* Letter from Arent Fox LLP, regarding ''Rebuttal Brief of CP Kelco AB,'' dated September 11, 2008. Petitioner did not submit a rebuttal brief. On September 11, 2008, Petitioner subsequently contacted Department officials and withdrew its request for a public hearing. See Memorandum to the File from Robert James, Program Manager, titled ''Withdrawal of Petitioner's Request for Hearing,'' dated September 11, 2008.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes;

however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the ''Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from Sweden,'' dated December 4, 2008 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room 1117 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made one change to the margin calculation for CP Kelco, to correct for a clerical error made at the *Preliminary Results* with regard to certain constructed export price sales that were inadvertently removed from our overall margin calculation. For a discussion of the change which the Department has made to the margin calculation for CP Kelco, see ''Memorandum to the File: Antidumping Duty Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose for CP Kelco AB (CP Kelco),'' dated December 4, 2008. A public version of this memorandum is on file in the CRU.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Weighted average margin (percentage)
CP Kelco A.B.	5.88

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise. CP Kelco has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from Sweden entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for CP Kelco will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or previous reviews, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 25.29 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

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

Dated: December 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Comments in the Issues and Decision Memorandum

Comment 1: Inclusion of Shut-down Costs in CP Kelco's Cost of Production.

Comment 2: Correction for Ministerial Errors.

[FR Doc. E8–29385 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-405-803)

Purified Carboxymethylcellulose From Finland; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 7, 2008, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order covering purified carboxymethylcellulose (CMC) from Finland. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45948 (August 7, 2008) (*Preliminary Results*). The merchandise covered by the order is purified CMC as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is July 1, 2006, through June 30, 2007. In the *Preliminary Results*, we invited parties to provide comments. We have not made any changes to our calculation based on our analysis of the comments received. Therefore, the final results do not differ from the *Preliminary Results*. The final weighted-average dumping margin for the reviewed firm is listed below in the section titled ''Final Results of the Review.''

DATES: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, 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) 482-1121, and (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2008, the Department published the preliminary results of administrative review of the antidumping duty order covering purified CMC from Finland. *See Preliminary Results*. The parties subject to this review are CP Kelco Oy and CP Kelco U.S., Inc. (collectively, CP Kelco). The petitioner in this proceeding is the Aqualon Company, a division of Hercules Incorporated (Petitioner).

In the *Preliminary Results* we invited parties to provide comments. In response, the Department received comments from Petitioner on September 5, 2008. *See* Letter from Haynes Boone Regarding Purified Carboxymethylcellulose from Finland; Request for a Public Hearing and Comment by Petitioner Aqualon Company in Lieu of Formal Case Brief, dated September 5, 2008 (Petitioner's Comments). On September 15, 2008, CP Kelco submitted its rebuttal to Petitioner's September 5, 2008 submission (CP Kelco's Rebuttal). Petitioner contacted officials at the Department and withdrew its request for a public hearing. *See* Memorandum to the File from Robert James, Program Manager, titled, ''Withdrawl of Petitioner's Request for a Hearing,'' dated September 11, 2008.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in Petitioner's Comments and in CP Kelco's Rebuttal are addressed in the Memorandum to David M. Spooner, Assistant Secretary for Import Administration: ''Issues and Decision Memorandum for the Final Results of the 2006-2007 Administrative Review of Purified Carboxymethylcellulose from Finland,'' dated December 4, 2008 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Issues and Decision Memorandum, is attached to this notice as an appendix. The Issues and Decision Memorandum is on file in the Central Records Unit in room 1117 of the main Department's building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at http://www.trade.gov/ia. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Based on our analysis of the comments received from interested parties, we have made no changes to the margin calculations for CP Kelco from the *Preliminary Results*.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/Exporter	Weighted Average Margin (Percentage)
CP Kelco Oy	13.89%

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. CP Kelco has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions directly to CBP fifteen days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification applies to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings:*

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from Finland entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): 1) The cash deposit rate for CP Kelco will be the rate established in the final results of this review; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 6.65 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that issubject to sanction.

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

Dated: December 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Comments:

Comment 1: Whether to Increase CP Kelco Oy's Cost of Production for Shut-down Costs Incurred by its Swedish Affiliate

[FR Doc. E8–29388 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–423–808)

Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On June 6, 2008, the Department of Commerce (the Department) published the preliminary results of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium. *See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 32298 (June 6, 2008) (*Preliminary Results*). This review covers one manufacturer/exporter of the subject merchandise: Ugine & ALZ Belgium (U&A Belgium). The period of review (POR) is May 1, 2006, through April 30, 2007.

Based on our analysis of the comments received, we have made changes to the Preliminary Results. For the final dumping margins see the ''Final Results of Review'' section below.

EFFECTIVE DATE: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon at (202) 482–3797 or (202) 482–1167, respectively; Office of AD/CVD Operations 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2008, the Department published in the **Federal Register** the preliminary results of the sixth administrative review of the antidumping duty order on SSPC from Belgium. *See Preliminary Results*. On September 15, 2008, the Department published a notice extending the deadline of the final results to December 3, 2008. *See Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 73 FR 53190 (September 15, 2008). Since the *Preliminary Results*, the following events have occurred. On October 17, 2008, the Department issued a Post–Preliminary Determination which applied an alternative cost–averaging methodology. *See* Memorandum from Angela Strom to Neal Halper titled, ''Proposed Adjustments to the Cost of Production and Constructed Value Data–Ugine and ALZ Belgium,'' dated October 17, 2008 (Post–Preliminary Determination).

The Department extended the briefing schedule to provide interested parties an opportunity to comment on the post–preliminary results. Case and rebuttal briefs were timely filed by the respondent, U&A Belgium, and Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steelworkers of America, AFL–CIO/CLC (collectively, the petitioners).[1]

The issues raised in all case and rebuttal briefs by parties to this administrative review are addressed in the memorandum titled, ''Issues and Decisions for the Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Stainless Steel Plate in Coils from Belgium (2006–2007)'', from Stephen J. Claeys, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to David M. Spooner, Assistant Secretary for Import Administration (December 3, 2008) (Decision Memorandum), which is hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the Central Records Unit (CRU), room 1117 of the Department of

[1] Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondent: on October 24, 2008, the petitioners filed a case brief (the Petitioners' Case Brief); on October 29, 2008, the petitioners filed a rebuttal brief (the Petitioners' Rebuttal Brief); on October 24, 2008, U&A Belgium submitted a case brief (U&A Belgium's Case Brief); and on October 29, 2008, U&A Belgium submitted a rebuttal brief (U&A Belgium's Rebuttal Brief).

Commerce main building and can be accessed directly at *(http://ia.ita.doc.gov/frn/index.html)*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of the Antidumping Duty Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat–rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold–rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils; (2) Plate that is not annealed or otherwise heat treated and pickled or otherwise descaled; (3) Sheet and strip; and (4) Flat bars.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the calculations for the final dumping margin. The changes made since the *Preliminary Results* are listed under the ''List of Issues'' which is appended to this notice. The changes are discussed in detail in the memorandum to the File Through James Terpstra from George McMahon titled, ''Analysis Memorandum for Ugine & ALZ, N.V. Belgium for the Final Results of the Sixth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium,'' dated December 3, 2008 (Final Sales Analysis Memorandum), and Memorandum to Neal M. Halper from Angela Strom titled, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Ugine and ALZ Belgium,'' dated December 3, 2008 (Final Cost Calculation Memorandum).

On January 28, 2008, U&A Belgium requested that the Department use quarterly weighted–average costs in its antidumping analysis arguing that the Department's normal annual average cost approach would result in distortions and inappropriate comparisons in our margin calculation. On May 9, 2008, the Department issued a general request for comment on the issue of shorter cost averaging periods in a **Federal Register** notice with a deadline for submission of comments of June 9, 2008.[2] The preliminary results of this administrative review were due prior to the comment deadline; thus, we found it was appropriate to follow our normal methodology of using U&A Belgium's annual weighted–average costs in our margin calculation. *See Preliminary Results*. However, we stated in the *Preliminary Results* that we intended to consider this issue further and provide a memorandum discussing the results of our analysis in order to give parties an opportunity to comment before the final results.

On October 17, 2008, we provided a post–preliminary calculation memorandum, which disclosed our intention to adopt an alternative cost averaging methodology in these final results. *See* Post–Preliminary Determination. In the Post–Preliminary Determination, the Department concluded that our alternative cost averaging approach is warranted in this case for the following reasons: 1) the changes in the cost of manufacturing experienced by U&A Belgium during the POR was clearly significant; and, 2) that the alloy surcharge mechanism demonstrates that costs were reasonably linked to sales prices during the POR. We have made no cost adjustments to our post–preliminary calculations in these final results.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period May 1, 2006, through April 30, 2007:

Manufacturer/Exporter	Margin (percent)
Ugine & ALZ Belgium ...	7.53

Duty Assessment

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)- specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–

[2] See Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364 (May 9, 2008) (Antidumping Methodologies; Request for Comment).

others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSPC from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) for U&A Belgium, the cash deposit rate will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less–than-fair–value (LTFV) investigation, the cash deposit rate will continue to be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 9.86 percent *ad valorem*, the ''all–others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999). These deposit rates, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

List of Issues

Comment 1: *Whether the Disallowance of Offsets for Non–Dumped Sales is in Accordance with the Statute and the International Obligations of the United States*

Comment 2: *Whether to Revise the Date of Sale for Certain Home Market Sales*

Comment 3: *Whether to Incorporate the Department's Findings in the Ongoing Scope Inquiry*

Comment 4: *Whether to apply an Alternative Cost–Averaging Methodology*

[FR Doc. E8–29410 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Certain Pasta From Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review

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

SUMMARY: On August 6, 2008, the Department of Commerce (the Department) published the preliminary results of the eleventh administrative review for the antidumping duty order on certain pasta from Italy. The review covers four manufacturers/exporters: F. Divella SpA (Divella), Pasta Zara SpA 1 and Pasta Zara SpA 2 (collectively, Zara), Pastificio Di Martino Gaetano & F. lli SrL (Gaetano), and Pastificio Felicetti SrL (Felicetti). The period of review (POR) is July 1, 2006, through June 30, 2007. Divella and Zara were selected as mandatory respondents.[1]

As a result of our analysis of the comments received, the final results differ from the preliminary results for Zara, Gaetano and Felicetti. The final weighted–average dumping margins for these companies are listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: December 11, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Zara) and Christopher Hargett (Divella), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3692 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2008, the Department published the preliminary results of the eleventh administrative review of the antidumping duty order on certain pasta from Italy. *See Certain Pasta from Italy: Notice of Preliminary Results of Eleventh Antidumping Duty Administrative Review*, 73 FR 45716 (August 6, 2008) (*Preliminary Results*).

Petitioners[2], Divella, and Zara submitted case briefs on October 20, 2008, and rebuttal briefs on October 27, 2008. On August 15, 2008, Divella and Zara requested a hearing. A public hearing was held on October 29, 2008.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic

[1] *See* Memorandum to Melissa Skinner, Director, Office 3, from Team regarding Selection of Respondents for Individual Review, October 15, 2007.

[2] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/, and is on file in the Central Records Unit, main Commerce Building, room 1117. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following weighted–average margin exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Margin (percent)
Divella	2.83
Zara	9.71

For those companies not selected as mandatory respondents, we determine that the following simple average percentage margin[3] (based on the two reviewed companies) exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Margin (percent)
Gaetano	6.27
Felicetti	6.27

[3] Because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed.

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Divella, Zara, Gaetano, and Felicetti will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.45 percent, the all–others rate established in the implementation of the findings of the WTO Panel in *US – Zeroing (EC)*. *See Implementation of the Findings of the WTO Panel in US – Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These cash deposit requirements shall remain in effect until further notice.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretarys' presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

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

Dated: December 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

General

Comment 1: Legal Standard for Level of Trade

F. Divella S.p.A.

Comment 2: Home Market Advertising Expenses

Comment 3: Home Market Level of Trade

Comment 4: HANDLH Should be Included in the Home Market Net Price Calculation

Pasta Zara S.p.A.

Comment 5: Treatment of Billing Adjustments
Comment 6: Direct Selling Expenses
Comment 7: Whether Zara U.S. Sales are CEP or EP
Comment 8: Zara's Home Market Level of Trade
Comment 9: Wheat Code Classification
Comment 10: Calculation of the G&A and Financial Expense Ratios
Comment 11: Treatment of Sales Proceeds with Respect to the Cost of Production

[FR Doc. E8–29393 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Capital Construction Fund—Deposit/ Withdrawal Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 9, 2009.

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 Charles L. Cooper at (301) 713–2396 or *Charles.Cooper@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders are required pursuant to 50 CFR 259.35 and Public Law 99–514 (The Tax Reform Act, 1986). The information collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported semi-annually to the Secretary of Treasury in accordance with the Tax Reform Act, 1986.

II. Method of Collection

The paper forms are currently required to be signed and mailed.

III. Data

OMB Control Number: 0648–0041.
Form Number: NOAA Form 34–82.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 3,600.
Estimated Time per Response: 20 minutes.
Estimated Total Annual Burden Hours: 1,200.
Estimated Total Annual Cost to Public: $21,060 in recordkeeping/ reporting costs.

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: December 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–29270 Filed 12–10–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Federal Acquisition Regulation; Information Collection; Transportation Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning transportation requirements. The clearance currently expires on December 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 9, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

Respondents: 65,000.
Responses Per Respondent: 21.32.
Annual Responses: 1,385,800.
Hours Per Response: .048.
Total Burden Hours: 66,518.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: October 29, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–29345 Filed 12–10–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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 January 12, 2009.

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, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 5, 2008.

Stephanie Valentine,

Acting IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: FY 2008 Migrant Education Program (MEP) Consortium Incentive Grants (1894–0001).
Frequency: Annually.
Affected Public: Business or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 30.
Burden Hours: 380.
Abstract: An application is required for the award of FY 2008 grants under the Migrant Education Program (MEP) Consortium Incentive Grant (CIG) program. The program provides competitive grants to State Educational Agencies (SEAs) that participate in high-quality consortium arrangements with another State or appropriate entity that will improve the delivery of services to migratory children whose education is interrupted. The program is authorized by section 1308(d) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 3913. 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 the Internet address *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. E8–29316 Filed 12–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 2009.

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 Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 5, 2008.

Stephanie Valentine,

Acting IC Clearance Official, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Protection and Advocacy of Individual Rights (PAIR).
Frequency: Annually.
Affected Public:
Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 912.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. RSA uses the form to meet specific data collection requirements of section 509 of the Rehabilitation Act of 1973, as amended (the act), and its implementing federal regulations at 34 CFR Part 381. PAIR programs must report annually using the form, which is due on or before December 30 each year. Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. These data also have been used to indicate trends in the provision of services from year-to-year.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3912. 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. E8–29317 Filed 12–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 2009.

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 Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 8, 2008.

Stephanie Valentine,

Acting IC Clearance Official, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.
Title: William D. Ford Federal Direct Loan Program: Deferment Request Forms.
Frequency: On occasion.
Affected Public:
Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 737,209.
Burden Hours: 117,953.

Abstract: These forms serve as the means by which borrowers in the Direct Loan Program may request deferment of repayment on their loans if they meet certain statutory and regulatory eligibility requirements. The U.S. Department of Education uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific deferment types that the borrower has requested.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3919. 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. E8–29318 Filed 12–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Historically Black College and University Capital Financing Program

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of request for proposals.

SUMMARY: The U.S. Department of Education (Department) is seeking proposals from businesses interested in applying to serve as the ''designated bonding authority'' (DBA) under the Historically Black College and University (HBCU) Capital Financing Program, authorized under Title III, Part D of the Higher Education Act of 1965, as amended (HEA). This notice describes the duties of the DBA, the selection criteria to be used to select the DBA, the selection process, and the process for submitting proposals.

DATES: Notices of intent to submit a proposal must be received by the Department on or before December 29, 2008. Proposals must be received by the Department on or before January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Donald E. Watson, Executive Director, Historically Black College and University Capital Financing Program, 1990 K Street, NW., room 6151, Washington, DC 20006; telephone: (202) 219–7037; fax: (202) 502–7852; e-mail: *donald.watson@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

General

The HBCU Capital Financing Program, authorized under Title III, Part D of the HEA, facilitates low-cost capital financing for HBCUs to enable them to continue and expand their educational mission and enhance their significant role in American higher education. Under this program, the Department provides financial insurance to guarantee up to $1,100,000,000 (approximately $650 million is already committed to current program borrowers) in loan principal and interest to qualifying HBCUs for specified kinds of capital projects. The Department provides this financing through an insurance agreement with a Designated Bonding Authority. To date, the Federal Financing Bank of the U.S. Treasury has purchased all bonds issued. Eligible borrowers under the program are limited to historically black colleges and universities as defined in section 322(2) of the HEA (20 U.S.C. 1061(2)).

The Designated Bonding Authority (DBA)

Section 314(d)(1) of the Higher Education Opportunity Act of 2008, Public Law 110–315 (HEOA), which amended the HEA, directs the Secretary to publish in the **Federal Register** a notice and request for proposals for any private for-profit organization or entity wishing to serve as the DBA following the enactment of the HEOA. Accordingly, through this notice, the Department seeks proposals from any private for-profit organization or entity wishing to serve as the DBA for the HBCU Capital Financing Program.

General Role and Responsibilities of the DBA

Under the HEA, the DBA issues taxable capital project construction bonds and plays a central role in administering and executing the HBCU Capital Financing Program. The DBA works with prospective borrowers to develop loan applications. With the approval of the Department, the DBA makes loans after determining, based on a credit review, that there is a reasonable expectation the loans will be repaid according to the terms of the loans. The DBA charges a rate of interest adequate to service the bond interest rate as well as to pay various costs of issuance including fees for the services of the DBA, costs to modify the loan documents, a Trustee, and fees for the services of other parties. These costs of issuance, however, must not exceed 2 percent of the principal amount of the proceeds of the bonds. The DBA monitors and enforces the loan agreements, including compliance with covenants and default provisions.

The DBA also has construction oversight responsibilities (including approval of construction plans, oversight of construction progress, and compliance with Federal and State building codes), and generally is the focal point of information for the HBCU Capital Financing Program. The DBA and other participants in the program are paid only by the operation of the program, and the Federal Government is not responsible for any of their fees.

Security for the bonds issued by the DBA includes investments, program loans, an escrow account funded with 5 percent of loan proceeds, and an insurance agreement executed by the Secretary or the Secretary's delegate and the DBA. This agreement will, subject to section 343(c)(1) of the HEA, 20 U.S.C. 1066b(c)(1), provide the full faith and credit of the United States to insure the payment of interest and principal on the bonds issued by the DBA.

The responsibilities of the DBA selected will be set forth in an agreement to insure to be negotiated with the Department. The DBA also will assume the responsibilities of the current DBA, including becoming the successor to the incumbent DBA with respect to loans made to date under an Agreement to Insure, dated May 8, 2001, a preceding Agreement to Insure, dated November 29, 1994, a June 13, 2007, Katrina Agreement to Insure, a master trust indenture, as amended and supplemented, and certain program financing agreements and bond purchase agreements. Copies of the agreements to insure used in the program to date, as well as copies of the master trust indenture, program financing agreements, and bond purchase agreements currently used in the program, will be provided to all entities that submit, in a timely manner, a written notice of intent to submit a proposal in accordance with this notice. We will also provide these entities with the current loan application form, credit criteria, loan agreement, and promotional literature as developed by the incumbent DBA. The HEOA may require modification of some or all of the foregoing documents.

Under the terms of section 315(d)(3) of the HEOA, the entity selected by the Department to serve as the DBA must undergo a performance review at least every three years. The statute authorizes the Secretary, based on this review, to use a revised competitive process, if the

Secretary determines a revised process is necessary.

Statutory Responsibilities of the DBA

The responsibilities of the DBA under the HEA are as follows:

(a) Use the proceeds of the qualified bonds, less costs of issuance not to exceed 2 percent of the principal amount thereof, to make loans to eligible institutions or for deposit into an escrow account for repayment of the bonds;

(b) Provide in each loan agreement with respect to a loan that not less than 95 percent of the loan proceeds will be used to finance the repair, renovation, and in exceptional cases, construction or acquisition, of a capital project, or to refinance an obligation the proceeds of which were used to finance the repair, renovation, and in exceptional cases, construction or acquisition, of an eligible capital project;

(c) Charge such interest on loans, and provide for such a loan repayment schedule, as will, upon the timely repayment of the loans, provide adequate and timely funds for the payment of principal and interest on the bonds; and require that any payment on a loan expected to be necessary to make a payment of principal and interest on the bonds be due not less than 60 days prior to the date of the payment on the bonds for which the loan payment is expected to be needed;

(d) Prior to the making of any loan, provide for a credit review of the institution receiving the loan and assure the Secretary that, on the basis of such credit review, it is reasonable to anticipate that the institution will be able to repay the loan in a timely manner pursuant to the terms of the loan;

(e) Provide in each loan agreement with respect to a loan that, if a delinquency on such loan results in a funding under the insurance agreement, the institution obligated on such loan shall repay the Secretary, upon terms determined by the Secretary, for such funding;

(f) Assign any loans to the Secretary, upon demand by the Secretary, if a delinquency or default has required a funding under the insurance agreement;

(g) In the event of a delinquency or default, engage in such collection efforts as the Secretary shall require for a period of not less than 45 days prior to requesting a funding under the insurance agreement;

(h) Establish an escrow account into which each eligible institution shall deposit 5 percent of the proceeds of any loan made, with each eligible institution required to maintain in the escrow account an amount equal to 5 percent of the outstanding principal of all loans made to that institution under the HBCU Capital Financing Program. The escrow's balance shall be available first to the Secretary for the payment of principal and interest on the bonds in the case of a delinquency or default in loan repayment. Within 120 days, following full repayment of an institution's loan, the balance of an institution's 5 percent deposit of loan proceeds shall be used to return to the institution an amount equal to any remaining portion of that deposit;

(i) Provide in each loan agreement that, if a delinquency or default occurs in any such program loan, all funds contributed by the borrowers to the escrow will be exhausted before there can be a funding under the insurance agreement.

(j) Provide in each loan agreement with respect to a loan that if a delinquency or default results in a withdrawal from the escrow account to pay principal and interest on bonds, subsequent payments on such loan shall be available to replenish the escrow account.

(k) Comply with the limitations described in section 344 of the HEA;

(l) Make loans available only to eligible institutions in accordance with conditions prescribed by the Secretary to ensure that loans are fairly allocated among as many eligible institutions as possible, consistent with making loans of amounts that will permit capital projects of sufficient size and scope to significantly contribute to the educational program of the eligible institutions; and

(m) Limit loan collateralization, with respect to any loan under the program, to 100 percent of the loan amount, except as otherwise required by the Secretary.

Additional Responsibilities of the DBA

Once designated by the Secretary or the Secretary's delegate, the DBA also will be required to:

(a) Provide, one week after the end of a calendar quarter, detailed accounting information on each borrower's loan(s), including the payment due date, payment received date, payment amount, and type of all payments and disbursements (including fees), and the schedule of future payments; reports on marketing; delinquency and detailed accounting information on the transfer of Federal Financing Bank (FFB) Fees including each borrower's loan(s), the FFB Fee amounts, and the date the FFB Fee was paid; and an analysis of each borrower's financial status;

(b) Provide audited annual financial statements for the DBA's activities three months after the end of a calendar year;

(c) Provide program data and information as may be requested by the Department within 15 calendar days of the request, except in cases in which the Department agrees to a longer timeframe; and

(d) Provide program marketing and communication materials to the Department and develop an annual marketing plan that is reviewed and approved by the Department.

Criteria for Selection of the DBA

The Department will use the following selection criteria to evaluate proposals for the DBA:

1. *Support of Minority Participation.* In accordance with section 348 of the HEA (20 U.S.C. 1066g), the extent to which the entity, in its employment, subcontracting, and partnering activities, encourages applications from members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability, will be a positive factor.

2. *Existence of trained staff to perform the various duties of the DBA.* It will be a positive factor if the entity will use its existing trained staff and resources, as opposed to having to hire and train new personnel and obtain new systems. Staff knowledge in the areas of bond financing, higher education credit, evaluation of security and collateral, program management, construction oversight (including knowledge of State and Federal building codes and standards), and loan servicing will be positive factors.

3. *Capacity to manage the issuance of a large offering of debt securities to the Federal Financing Bank pursuant to a direct placement.* It will be a positive factor if the entity is a regular participant in the capital markets, using financing structures similar to those described in the Agreement to Insure between the Department and the existing DBA.

4. *Financial position and stability relative to industry norms.* It will be a positive factor if the entity is a mature, stable corporation with favorable trends in key financial strength indicators such as net worth and stable earnings.

5. *Approach in performing the requirements of the program.* It will be a positive factor if the entity presents a well thought out approach to the program, and has a thorough familiarity with the documentation used in the program. Suggestions for change in program documentation and administration will be entertained.

6. *Experience and resources available and commitment to providing business development services.* It will be a positive factor if the entity currently undertakes similar business development functions as those required under the Agreement to Insure. Ideas for business development, which should be included in the proposal, will be positive factors.

7. *Past performances on previous Federal Government contracts.* Sound prior performance on Federal Government contracts and familiarity with the particular requirements of the Federal Government will be a positive factor.

8. *Demonstrated history and ability in addressing the special needs of HBCUs.* It will be a positive factor if the entity can demonstrate that it has extensive experience working closely and successfully with HBCUs. It will be particularly helpful if the entity has been involved in activities related to the HBCUs' educational mission, improvement of HBCUs' facilities, or HBCUs' financial planning.

9. *Detailed cost proposal.* The extent to which the entity's cost proposal, e.g., provisions for separation of fees, including separate pricing for the costs of issuance, promotion, financing, loan review, construction oversight, ongoing loan servicing, program monitoring, post-loan closing document modification, and program administration, reflects an understanding of the various responsibilities of the DBA. Statements indicating the entity's willingness to promote the program, recognizing that payment of fees is contingent on making the loans to HBCUs, will be a positive factor.

10. *Corporate authority and ability to comply with for-profit requirement.* The entity must have full corporate authority to perform the functions of the DBA and must specify the corporate and transactional structure it intends to establish with respect to its program responsibilities, including its access to financial resources and performance agreements. If the entity will be a special, for-profit subsidiary of a not-for-profit entity and proposes to enter into a long-term contract with the not-for-profit entity, under which the not-for-profit entity will perform all or some of the actual responsibilities of the DBA, we will assess the relationship proposed to make sure it is workable over the long-term. Agreements between the non-profit and the for-profit entities that are unconditional will be viewed positively, and agreements with extensive conditions will be viewed negatively.

11. *Cohesiveness with any subcontractors.* It is possible that the entity may seek to use subcontractors in performing its duties under the Agreement to Insure. Arrangements with subcontractors will be reviewed in light of how extensive the subcontractor's role would be and the ability of the contractor to replace a subcontractor for cause. An arrangement in which a subcontractor performs a discrete function and receives specific identifiable compensation will receive a more positive rating than an arrangement with a subcontractor in which tasks and compensation are shared between the contractor and the subcontractor.

12. *No conflict of interest.* We will not consider any proposal that indicates an actual or apparent conflict of interest.

13. *Senior management stability.* It will be a positive factor if the senior management of the entity is experienced and stable.

14. *Special assistance to program applicants.* It will be a positive factor if the entity demonstrates the ability, and presents a strategy, to provide assistance to potential borrowers who do not currently meet criteria for receiving a loan under this program.

15. *Loan procedures.* The extent to which the entity proposes workable written policies and procedures addressed to the originating, servicing and monitoring of program loans, including adequate internal controls. The written policies and procedures should include but are not limited to the initial pre-application procedure, the calculation of the costs of issuance, quality control for loan closing documentation and recordation, how delinquency and defaults are handled, processes for handling borrower inquiries, reconciling and segregating principal, interest, escrow fees, late fees, default payments, Federal Financing Bank fees and other fees, and the types of information provided in borrower billing statements.

16. *Fully operational after appointment.* Because the Department desires that the HBCU Capital Financing Program not experience any lapse in its outreach efforts or operations, the entity's demonstrated ability to become fully operational, including but not limited to reconciling current borrower account balances, as the DBA immediately upon appointment will be important.

Proposal Content

In addition to responding to each of the selection criteria described, proposals submitted must include the following information:

1. A statement that the entity has the legal corporate authority to perform all of the services required of the DBA by the Agreement to Insure and the statute.

2. Assurances that no conflicts of interest or apparent conflicts of interest exist, and a description of the review and analysis that the entity conducted to reach this conclusion.

3. Resumes of the entity's owners and proposed program managers.

4. A description of the entity's experience with respect to each of the DBA's responsibilities as described in this notice, including in particular any current relevant experience the entity may have. This description must include a discussion of existing resources available to perform the DBA's duties, and the need (if any) to hire and train additional staff. Because the DBA is expected to perform these duties for an extended period, the proposal must describe similar programs and tasks that the entity currently expects to perform during its tenure as DBA.

5. A description of the entity's approach to performing each of the DBA's responsibilities, which must reflect the entity's review and understanding of the current program documents and processes. Innovative presentations will convey the entity's understanding of the proposed duties and will be favorably received.

6. Information with respect to the entity's financial strength and copies of the entity's last five annual audited financial statements. The proposal must contain factors that assure the entity's existence for an extended period, including, for example, issuance of other long-term non-callable debt, or other long-term ventures, which will require the long-term existence of the entity.

7. A discussion of the entity's history in working with HBCUs, particularly with respect to experience relating to HBCU physical facilities, financial planning, and the HBCUs' educational mission. It must also describe actions the entity has taken and plans it has made for recruiting and outreach programs to ensure a diverse applicant pool in the entity's employment, subcontracting, and partnering activities, as well as the success the entity has achieved in attracting diverse applicants.

Submission of Proposals and Selection Process

Entities interested in submitting proposals must send written notice of their intent to Donald Watson, Executive Director, Historically Black College and University Capital

Financing Program, by mail, commercial carrier or fax. All notices of intent must be received by the Department on or before December 29, 2008. Notices of intent sent by mail should be addressed to Mr. Watson at 1990 K Street, NW., Room 6151, Washington, DC 20006. Notices of intent sent by fax should be faxed to Mr. Watson at (202) 502–7852. Although neither telephone nor e-mail submission of notices of intent are acceptable, Mr. Watson's telephone is (202) 219–7037 and his e-mail is *donald.watson@ed.gov.* All notices must include the entity's name, address, telephone number, e-mail address, fax number, and point of contact. The Department will then supply the entity with copies of the current DBA agreements, forms, and documentation described earlier in this notice.

Each interested entity must send, by mail or commercial carrier, eight (8) copies of its written proposal. Proposals must be sent to Mr. Watson at the above address, and must be received by him on or before January 30, 2009. Written proposals cannot be submitted by fax or e-mail. Written proposals submitted by entities that failed to submit a notice of intent or submitted its notice of intent late will not be considered.

We do not consider any proposal that does not comply with the deadline requirements. If your proposal is sent after the deadline date, we will not consider it.

Consideration of all proposals submitted will be based on the 16 criteria listed. The Department will rank the proposals quantitatively after giving each criterion a score of 1 to 10, with 1 being generally unfavorable and 10 being generally favorable. Highest-ranking proposals will be contacted for an oral interview, currently scheduled for the last week of February 2009.

The Secretary or Secretary's delegate will make a final selection of the DBA, upon consideration of a written record that includes the highest-ranking proposals and staff recommendations. The record will be publicly available. The Department expects to complete the selection process within approximately ten weeks of the date of this notice.

The appointment of the DBA will become effective as of the date of expiration of the incumbent DBA's appointment, which will occur immediately after the selection of the new DBA.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1066 *et seq.*

Dated: December 8, 2008.

Vickie Schray,

Acting Deputy Assistant Secretary, Higher Education Programs, Office of Postsecondary Education.

[FR Doc. E8–29378 Filed 12–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–020]

Energy Conservation Program for Commercial Equipment: Publication of the Petition for Waiver From Mitsubishi Electric & Electronics USA, Inc. and Granting of the Application for Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi). The Petition for Waiver (hereafter ''Mitsubishi Petition'') requests a waiver of the Department of Energy (DOE) test procedure applicable to commercial package air-cooled central air conditioners and heat pumps. The waiver request is specific to the Mitsubishi variable speed and variable refrigerant volume S&L Class (commercial) multi-split heat pumps and heat recovery systems. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Mitsubishi Petition; and (2) announcing our determination to grant an Interim Waiver to Mitsubishi from the applicable DOE test procedure for the subject commercial air-cooled, multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Mitsubishi Petition until, but no later than January 12, 2009.

ADDRESSES: You may submit comments, identified by case number ''CAC–020,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Michael.Raymond@ee.doe.gov.* Include either the case number [CAC–020], and/or ''Mitsubishi Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. William Rau, Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential

status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov*.

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Eric.stas@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [1] (42 U.S.C. 6291–6309) Similar to the Program in Part A, Part A–1 of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment.[2] (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, it generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' for small and large commercial package air-cooled heat pumps with capacities ≥ 65,000 Btu/h and < 760,000 British thermal units per hour (Btu/h). *Id.* at 71370. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI Standard, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Mitsubishi's commercial S&L Class multi-split heat pump products range from 72,000 Btu/hr to 360,000 Btu/hr, thereby resulting in these products falling within the range covered by ARI Standard 340/360–2004.)

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The waiver provisions for commercial equipment are found at 10 CFR 431.401 and are substantively identical to those for covered consumer products. Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 431.401(g).

The waiver process also allows any person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and it may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

[1] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Public Law 109–58.

[2] This part was originally titled Part C; however, it was redesignated Part A–1, after Part B of Title III was repealed by Public Law 109–58.

II. Petition for Waiver

On March 28, 2008, Mitsubishi filed a Petition for Waiver from the test procedures at 10 CFR 431.96 which are applicable to commercial package air-cooled heat pumps and an Application for Interim Waiver. As noted above, the applicable test procedure for Mitsubishi's commercial S&L Class multi-split heat pumps is ARI Standard 340/360–2004, which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96. The capacities of the Mitsubishi S&L Class multi-split heat pumps range from 72,000 Btu/hr to 240,000 Btu/hr, and outdoor units may be combined to create systems of up to 360,000 Btu/hr capacity. Accordingly, the applicable test procedure for all these sizes is ARI Standard 340/360–2004.

Mitsubishi seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its S&L Class multi-split heat pumps and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Mitsubishi asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test.

72 FR 71383 (December 17, 2007); 72 FR 71387 (December 17, 2007); 72 FR 17528 (April 9, 2007); 69 FR 52661 (August 27, 2004).

The S&L Class has operational characteristics similar to Mitsubishi's R22 and R410A models, which have already been granted waivers, and the WR2 and WY products, which have been granted an Interim Waiver. Each of the S&L Class indoor units is designed to be used with up to 50 other indoor units, which need not be the same models. There are 64 different indoor models. Unlike other multi-split products, Mitsubishi's S&L Class has the capability to combine outdoor units to create a larger capacity system. Mitsubishi further states that its S&L Class products' capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. This is true, but not relevant. DOE is required by EPCA to use the full-load descriptor EER for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, Mitsubishi requests that DOE grant a waiver from the applicable test procedures for its S&L Class product designs, until a suitable test method can be prescribed. DOE believes that the S&L Class Mitsubishi equipment and Mitsubishi equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE is therefore granting to Mitsubishi an S&L Class product waiver similar to the previous Mitsubishi multi-split waivers. Mitsubishi is requesting one modification to the alternate test procedure granted in previous waivers made necessary to account for the ability of S&L Class products to connect multiple outdoor units. This modification would allow representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings of tested combinations of the outdoor units used in the system. Furthermore, Mitsubishi states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its S&L Class products. Also, Mitsubishi states that it is willing to work closely with DOE, ARI, and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On March 28, 2008, in addition to its Petition for Waiver, Mitsubishi submitted to DOE an Application for Interim Waiver. Mitsubishi's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Mitsubishi will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Daikin, Mitsubishi, Samsung and Fujitsu for comparable commercial multi-split air conditioners and heat pumps. 72 FR 35986 (July 2, 2007), 72 FR 17533 (April 9, 2007), 70 FR 9629 (Feb. 28, 2005), 70 FR 5980 (Feb. 4, 2005), respectively.

Moreover, as noted above, DOE approved the Petition for Waiver from Daikin, Fujitsu, Samsung and Mitsubishi for their comparable lines of multi-split air conditioners and heat pumps. 73 FR 39680 (July 10, 2008); 72 FR 71383 (Dec. 17, 2007); 72 FR 71387 (Dec. 17, 2007); 72 FR 17528 (April 9, 2007). The two principal reasons for granting the waivers also apply to Mitsubishi's S&L Class products: (1) Test laboratories cannot test products with so many indoor units; [3] and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Mitsubishi's Petition for Waiver will be granted for its new S&L Class multi-split models. Therefore, *it is ordered that:*

The Application for Interim Waiver filed by Mitsubishi is hereby granted for Mitsubishi's S&L Class air-cooled multi-split central air conditioning heat pumps, subject to the specifications and conditions below.

1. Mitsubishi shall not be required to test or rate its S&L Class commercial air-cooled multi-split products on the basis of the currently applicable test procedure under 10 CFR 431.96, which incorporates by reference ARI Standard 340/360–2004.

2. Mitsubishi shall be required to test and rate its S&L Class commercial air-cooled multi-split products according to the alternate test procedure as set forth in section IV(3), ''Alternate test procedure.''

The Interim Waiver applies to the following models:

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 360,000 Btu/hr.
- Hyper-heat Y–Series (PUHY–HP) 208/230–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal cooling capacities of 72,000 and 96,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 192,000 Btu/hr.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

[3] According to the Mitsubishi petition, up to 50 indoor units are possible candidates for testing of its commercial package multi-split heat pump and heat recovery systems. However, DOE believes that the practical limits for testing would be about five units.

• PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.
• PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.
• PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.
• PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.
• PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.
• PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.
• PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.
• PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.
• PLFY Series—4-Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.
• PMFY Series—1-Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this Interim Waiver at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE. The ARI committee has considered a draft ISO methodology, ISO CD 15042, for multi-split systems. However, it contains no guidance that would affect this waiver.

Therefore, as discussed below, as a condition for granting this Interim Waiver to Mitsubishi, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. DOE plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Mitsubishi's Petition for Waiver. Utilization of this alternate test procedure will allow Mitsubishi to test and make energy efficiency representations for its S&L Class products. More broadly, DOE has applied a similar alternate test procedure to other waivers for similar commercial air conditioners and heat pumps. Such cases include Samsung's waiver for its multi-split products at 72 FR 71387 (Dec. 17, 2007), Fujitsu's waiver for its multi-split products at 72 FR 71383 (Dec. 17, 2007), and Daikin's waiver for its multi-split products at 73 FR 39680 (July 10, 2008). DOE believes that an alternate test procedure is needed so that manufacturers of such products can make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A and R22 CITY MULTI products, with an additional modification to account for combinations using multiple outdoor units. DOE plans to consider inclusion of the following waiver language in the Decision and Order for Mitsubishi's S&L Class commercial multi-split air-cooled heat pump models:

(1) The ''Petition for Waiver'' filed by Mitsubishi Electric & Electronics USA, Inc. is hereby granted as set forth in the paragraphs below.

(2) Mitsubishi shall not be required to test or rate its S&L Class variable refrigerant volume multi-split heat pump products listed above in section III, on the basis of the currently applicable test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Mitsubishi shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Mitsubishi shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Mitsubishi shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 8 indoor units in total; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its S&L Class variable speed and variable refrigerant volume air-cooled multi-split heat pump and heat recovery system products, for compliance, marketing, or other purposes, Mitsubishi must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For S&L Class combinations using a single outdoor unit tested in accordance with this alternate test procedure, Mitsubishi may make representations based on these test results.

(ii) For S&L Class combinations using a single outdoor unit that have not been tested, Mitsubishi may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(iii) For S&L Class combinations utilizing multiple outdoor units that have been tested in accordance with this alternate test procedure, MEUS may make representations based on those test results.

(iv) For S&L Class combinations utilizing multiple outdoor units that have not been tested, MEUS may make representations which are consistent with any of the three following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same combination of outdoor units.

(c) Representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings for the tested combinations for each of the individual outdoor units used in the system, as determined in accordance with the provisions of this alternate test procedure.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Mitsubishi Petition for Waiver from the test procedures applicable to Mitsubishi's S&L Class commercial multi-split heat pump products, and for the reasons articulated above, DOE is granting Mitsubishi an Interim Waiver from those procedures. As part of this notice, DOE is publishing Mitsubishi's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Mitsubishi is required to follow as a condition of its Interim Waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which Mitsubishi could use in lieu of testing all retail combinations of its S&L Class multi-split heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an ARM approved by DOE, or to rate waived products the same as the specified tested combination with the same outdoor unit(s). DOE is also considering applying a similar alternate test procedure to other comparable Petitions for Waiver for commercial air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its Digital Variable Multi (DVM) products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 72 FR 71383 (Dec. 17, 2007). DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** section above.

Issued in Washington, DC, on December 1, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

March 28, 2008

Alexander Karsner

Assistant Secretary

Office of Energy Efficiency & Renewable Energy

U.S. Department of Energy

1000 Independence Ave., SW.

Washington, DC 20585–0121

Re: *Petition for Waiver of Test Procedures and Application for Interim Waiver for CITY MULTI VRFZ S&L Class Air Conditioners and Heat Pumps*

Dear Assistant Secretary Karsner:

Mitsubishi Electric & Electronics USA, Inc. (''MEUS'') respectfully submits this petition for waiver, and application for interim waiver, of the commercial test procedures applicable to the new S&L Class of MEUS's CITY MULTI Variable Refrigerant Flow Zoning (''VRFZ'') product line pursuant to the provisions of 10 CFR 431.401. The S&L Class is similar to the R22 and R410A models of MEUS's CITY MULTI VRFZ product line, which were previously granted waivers, except that (1) these units have a more compact chassis design, and (2) the outdoor units may be installed individually in a VRFZ system or combined together to create larger capacity VRFZ systems, up to 240,000 Btu/h for the R2–Series units and 360,000 Btu/h for the Y–Series units. Similar to the CITY MULTI systems covered by the earlier waivers, the systems covered by this petition cannot be tested according to the prescribed test procedures for commercial products, and, therefore, should be granted a waiver from the applicable test procedures. MEUS proposes that DOE impose an alternate test procedure that can be applied practicably to these products, consistent with the alternate test procedure outlined in the waivers applicable to the R22 and R410A models. MEUS simultaneously requests an interim waiver covering the S&L Class.

The S&L Class contains units that fall into the commercial category of air conditioners. Thus, MEUS is seeking a waiver from the commercial test procedures applicable to these models. While the Department of Energy (''DOE'' or ''Department'') has provided a test procedure which allows manufacturers to practically test and rate their residential multi-split systems that can be combined into many potential system combinations,[4] currently no such solution exists for similar commercial products. The Air-Conditioning, Heating and Refrigeration Institute (''AHRI'') is currently in the process of developing a test procedure for these types of commercial products, but the test procedure has yet to be finalized. MEUS is simply seeking a waiver for the interim period of time until a standard test procedure that can test and rate these commercial multi-split products is developed and codified by DOE.

I. Background

DOE has previously granted waivers and interim waivers from the applicable air conditioner and heat pump test procedures for other models of MEUS's

[4] *Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps,* 72 FR 59906 (Oct. 22, 2007) (hereinafter, ''October 2007 Final Rule''). MEUS will test and rate the residential sizes of the S&L Class pursuant to the test procedure outlined in the October 2007 Final Rule. As described below, the S&L Class has the capability of combining outdoor units together to create larger capacity systems, with combined capacities of a commercial-sized unit. We expect to test and rate systems with single outdoor units with capacities of less than 65,000 Btu/h under the residential test procedure to avoid any confusion caused by multiple ratings for the same unit.

CITY MULTI products. On August 27, 2004, DOE granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's R22 CITY MULTI products.[5] DOE found that the R22 models should be granted a waiver because they have ''one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [6] In April 2007, the Department granted MEUS's requested waiver for its R410A CITY MULTI models based on an identical finding.[7] DOE found that ''the testing problems described [by MEUS] do prevent testing of the R410A CITY MULTI basic model according to the test procedures prescribed.'' [8] Both the R22 and R410A products cannot be tested according to the prescribed test procedures for two main reasons: (1) The test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units (well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations.

On April 9, 2007, DOE granted an interim waiver for the WR2 and WY models of MEUS's CITY MULTI products.[9] MEUS's WR2 and WY models are similar to the R410A products except that they represent the models of the CITY MULTI product line that are water-source heat pumps. Since DOE found that the testing problems that existed with the R22 and R410A products applied to the WR2 and WY products as well, it was ''likely that MEUS' Petition for Waiver will be granted.'' [10] Thus, DOE granted an interim waiver for the WR2 and WY models.

II. S&L Class Design Characteristics

MEUS's line of CITY MULTI VRFZ products combines advanced technologies and are complete, commercial zoning systems that save energy through the effective use of variable refrigerant control and distribution, zoning diversity, and system intelligence. As highlighted in the previous petitions for waiver for the other CITY MULTI products, the operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (*i.e.*, on/off/heat/cool/dry/auto/fan) and a different set temperature allowing great flexibility of operation. The variable speed compressor and the system controls direct refrigerant flow throughout the system to precisely match the performance of the system to the load of the conditioned areas. The CITY MULTI VRFZ systems also have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. Additionally, the CITY MULTI VRFZ R2–Series products offer consumers the option of simultaneous heating and cooling. These characteristics allow the CITY MULTI VRFZ systems to offer cost-effective functionality and significant energy savings.

Similar to the other CITY MULTI models, the S&L Class has the capability of connecting a single outdoor unit to up to 30 indoor units.[11] Unlike the other CITY MULTI products, however, the S&L Class has the additional capability of installing the outdoor units individually in a VRFZ system or combining them together to create larger capacity VFRZ system. The Y–Series and R2–Series outdoor units have nominal cooling capacities between 72,000 and 144,000 Btu/h, which may be combined to create systems with nominal cooling capacities up to 240,000 Btu/h for the R2–Series units and 360,000 for the Y–Series units. A three module outdoor unit system may be connected to up to 50 indoor units. The ability to combine smaller outdoor units to create larger outdoor units is a unique feature of the S&L Class that gives these systems tremendous flexibility to meet customers' specific demands. This feature, however, increases the already very large number of potential combinations by several times.

Although the energy saving characteristics of these products are not credited under current rules, they are precisely the types of technological innovations and applications that advance the Congressional intent of promoting energy savings. These CITY MULTI VRFZ systems represent a revolutionary advance in HVAC technology, well positioned to provide new and existing commercial buildings with effective use of energy and an operationally cost-effective source of heating and cooling. Additionally, with some of the innovative capabilities of the CITY MULTI Controls Network, the potential for energy management and energy savings are even greater. The CITY MULTI products' unique design characteristics are clearly consistent with U.S. government's efforts to encourage the availability of high performance products that consume less energy.

III. Test Procedures From Which Waiver Is Requested

MEUS's petition requests waiver from the commercial test procedures for its S&L Class products. As stated above, the S&L Class contains units that fall into both the residential and commercial categories of air conditioners. However, since DOE recently provided a test procedure which allows manufacturers to test and rate their residential multi-split systems that can be combined into multiple potential system combinations, MEUS is only seeking a waiver from the commercial test procedures applicable to these models.

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth the provisions concerning energy efficiency. Part C of EPCA Title III provides the energy efficiency requirements and test procedures for commercial products.[12] On October 21, 2004, DOE published a direct final rule, effective December 21, 2004, adopting updated test procedures for commercial package air conditioning equipment.[13] These test procedures are outlined in DOE's regulations, at 10 CFR 431.96. For commercial package air conditioning equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure. The capacities of MEUS's S&L Class CITY MULTI products sold for commercial use fall in that range. Therefore, MEUS requests waiver from

[5] *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC–008),* 69 FR 52660 (Aug. 27, 2004) (hereinafter, ''R22 Waiver'').

[6] R22 Waiver at 52662. *See also* 10 CFR 431.201(a)(1) and (f)(4) (2007) (outlining the standards that must be met for the grant of a waiver).

[7] *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Department of Energy (DOE) Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures to Mitsubishi Electric, and Modification of a 2004 Waiver Granted to Mitsubishi Electric From the Same DOE Test Procedures (Case No. CAC–012),* 72 FR 17528 (Apr. 9, 2007) (hereinafter, ''R410A Waiver'').

[8] R410A Waiver at 17531.

[9] *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Commercial Water Source Heat Pump Test Procedure [Case No. CAC–015],* 72 FR 17533 (Apr. 9, 2007) (hereinafter, ''WR2/WY Interim Waiver'').

[10] WR2/WY Interim Waiver at 17535.

[11] MEUS offers 64 indoor models in its S&L Class CITY MULTI product line. The number of potential combinations of the 64 models in sets of up to 30 is in the millions.

[12] 42 U.S.C. 6311–6317.

[13] *Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps*, Direct Final Rule, 69 FR 61962 (Oct. 21, 2004).

the test procedures for commercial products.

MEUS proposes to test and rate a tested combination for each individual outdoor unit pursuant to an alternate test procedure discussed below. As noted earlier, however, the outdoor units in the S&L Class can be combined to make larger capacity systems. Thus, MEUS is also proposing that it may make representations about the efficiency of systems using combinations of outdoor units based on: (1) The results of testing such combinations pursuant to the alternate test procedure outlined below; or (2) the capacity-weighted average of the efficiency ratings, determined pursuant to the alternate test procedure, of the individual outdoor units that make up the combined system.

IV. Basic Models for Which Waiver Is Requested

MEUS requests a waiver from the test procedures for the basic models consisting of combinations of the following products:

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 360,000 Btu/h.
- Hyper-heat Y–Series (PUHY–HP) 208/230–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal cooling capacities of 72,000 and 96,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 192,000 Btu/h.
- R2–Series (PURY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with heat recovery and with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 240,000 Btu/h.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

- PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.
- PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.
- PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.
- PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.
- PLFY Series—4-Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.
- PMFY Series—1-Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

V. Need for Waiver of Test Procedures

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for commercial equipment. These provisions are set forth in 10 CFR 431.401. These waiver provisions allow DOE to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data.[14]

In both the R22 Waiver and R410A Waiver, DOE found that MEUS's CITY MULTI products contained one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures.[15] DOE granted MEUS's request for an interim waiver for the WR2 and WY CITY MULTI products because the testing problems that existed with the R22 and R410A products applied to the WR2 and WY products as well.

The S&L Class has similar operational characteristics as the R22 and R410A models, which have already been granted a waiver, and the WR2 and WY products, which have been granted an interim waiver. Similar to the R22 and R410A models, and the WR2 and WY systems, the S&L Class can connect more indoor units than the test laboratories can physically test at one time. Each of the S&L Class indoor units is designed to be used with up to 50 other indoor units with a three modual outdoor unit system. These connected indoor units need not be the same models—there are 64 different indoor models that can be combined in a multitude of different combinations to address customer needs. The testing laboratories will not physically be able to test many of the S&L Class system combinations because of the inability to test products with so many indoor units.

Additionally, there are millions of potential combinations that can be created with the various S&L Class models. It is not practical to test all of the potentially available combinations, of which there are more than one million. Finally, the S&L Class models have the ability to connect multiple outdoor units together to create larger capacity systems. This unique feature increases the number of potential combinations significantly. Therefore, the same design characteristics that prevent testing of the basic R22, R410A, WR2 and WY CITY MULTI models also prevent testing of the S&L Class CITY MULTI models.

As shown above, the S&L Class products cannot be tested according to the prescribed test procedures. MEUS also believes that the requested waiver is supported on the grounds that the test procedures ''may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics * * * as to provide materially inaccurate comparative data.'' [16] In particular, the benefits of variable refrigerant control and distribution, zoning diversity, part load operation and simultaneous heating and cooling, as described above, are not credited under the current test procedures.

The October 2007 Final Rule provides a test procedure to test and rate multi-split residential systems that can be configured in many different potential combinations. No such test procedure exists for multi-split commercial products, however. DOE has not adopted a similar test procedure to test and rate multi-split commercial products. The currently-effective test procedure for commercial products cannot accurately test and rate multi-split commercial products that can be configured into millions of combinations.

[14] 10 CFR 431.401(a)(1) and (f)(4).

[15] R22 Waiver at 52662; R410A Waiver at 17531.

[16] 10 CFR 431.201(a)(1) (2005).

VI. Outdoor Unit Combinations

As described above, one of the unique features of the S&L Class is the ability to combine outdoor units to create larger capacity systems. For example, if three of the Y–Series PUHY 120,000 Btu/h outdoor units are combined, the resulting outdoor unit will have a nominal cooling capacity of 360,000 Btu/h. This unique capability gives these systems tremendous flexibility to meet the customer's specific demands. DOE's test procedures do not provide any direction on how to test and rate products that have the capability to connect outdoor units.

MEUS proposes that, until such a time that test procedures expressly address this issue, MEUS may make representations about the efficiency of systems using combinations of outdoor units based on: (1) The results of testing such combinations pursuant to the alternate test procedure outlined below; or (2) the capacity-weighted average of the efficiency ratings of the individual outdoor units, as determined pursuant to the alternate test procedure, that make up the combined system.

VII. Alternate Test Procedures

Currently, there are no standard test procedures known to MEUS that can accurately evaluate these products. AHRI is currently in the process of developing a test procedure that will be able to accurately test and rate all multi-split systems, including commercial-sized systems, which have the ability to be combined to create numerous potential system combinations. The test procedure, AHRI Draft Standard 1230, will next be submitted for a vote to the members of the Ductless Split-System Production Section. After it is approved by that Section, it will be submitted to the General Standards Committee for final approval by AHRI. After it is approved by AHRI, the test procedure will be submitted to DOE to be incorporated into 10 CFR Part 431. MEUS's requested waiver would only be valid in the interim until AHRI Standard 1230, or another test procedure that will accurately test and rate commercial multi-split air conditioning equipment, is approved and incorporated into DOE's regulations.

While the requested waiver is in effect, MEUS proposes that DOE impose an alternate test procedure that can be applied practicably to these products. In response to MEUS's petition for waiver for the R410A products, DOE adopted an alternate test procedure to provide a conservative basis from which manufacturers covered by a test procedure waiver for commercial VRFZ products can test and make valid energy efficiency representations, for compliance, marketing, or other purposes, regarding these products.[17] DOE adopted a similar test procedure for residential products in the October 2007 Final Rule. MEUS requests that DOE apply the alternate test procedure provided in the R410A Waiver to the S&L Class in order to allow MEUS to test and make energy efficiency representations regarding these products.

Manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA.[18] As DOE acknowledged in the R410A Waiver, ''the ability of a manufacturer to make representations about the energy efficiency of its products is important, for instance, to determine compliance with state and local energy codes and regulatory requirements. Energy efficiency representations also provide valuable consumer purchasing information.'' [19] Therefore, MEUS respectfully requests that DOE apply the alternate test procedure outlined in the R410A Waiver to the S&L Class.

The alternate test procedure outlined in the R410A Waiver has two basic components. First, it will permit MEUS to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. This tested combination must be tested according to the applicable DOE test procedures. Second, the alternate test procedure will permit MEUS to represent the energy efficiency for a non-tested combination in two ways. MEUS may represent the energy efficiency of a non-tested combination: (1) At an energy efficiency level determined under a DOE-approved alternate rating method; or if that option is not available, then (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Pursuant to the alternate test procedure provided in the R410A Waiver, until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

According to DOE:

Allowing MEUS to make energy efficiency representations for non-tested combinations as described above is reasonable because the outdoor unit is the principal efficiency driver. The current test procedure tends to rate these products conservatively. This is because the current test procedure does not account for the product's simultaneous heating and cooling capability, which is more efficient than requiring all zones to be either heated or cooled. Further, the multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, can use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. Additionally, the current test procedure for commercial equipment requires full load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore * * * the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.[20]

MEUS proposes that representations about the efficiency of the S&L Class combinations that have combined individual outdoor units to create larger capacity VFRZ systems would be permitted based on: (1) The results of testing of such combinations pursuant to the alternate test procedure; or (2) the capacity-weighted average of the efficiency ratings of the individual outdoor units that make up the combined system.

Attached to this Application, as Appendix 1, is a proposed alternate test procedure for the S&L Class products. The proposed alternate test procedure is based on the alternate test procedure provided in the R410A Waiver, except for new provisions relating to the treatment of systems that combine individual outdoor units to create larger capacity VFRZ systems.[21]

VIII. Similar Products

To the best of our knowledge, models similar to MEUS's S&L Class products, which have the ability to combine multiple outdoor units to create larger capacity systems, are also offered in the

[17] R410A Waiver at 17530.

[18] *See* 42 U.S.C. 6314(d); 42 U.S.C. 6293(c).

[19] R410A Waiver at 17530.

[20] R410A Waiver at 17530.

[21] MEUS proposes two other minor deviations from the alternate test procedure approved in the R410A Waiver. First, MEUS proposes that the tested combination consist of one outdoor unit that is matched with between 2 and 8 indoor units. In the alternate test procedure provided in the R410A Waiver, a tested combination consisted of one outdoor unit that is matched with between 2 and 5 indoor units. MEUS is proposing to increase the maximum number of indoor units in a tested combination from 5 to 8 to account for the fact that the S&L Class products that have combined outdoor units can accommodate a greater number of indoor units. Second, MEUS is proposing a clarification of the prior language concerning the capacities of the outdoor and indoor units to specify that references to capacities are references to the nominal cooling capacities of the units. Since cooling and heating capacities of units may differ, MEUS would like to clarify these references to avoid any confusion.

United States by Daikin AC (Americas), Inc. and LG Electronics U.S.A., Inc.

IX. Application for Interim Waiver

Pursuant to 10 CFR 431.401(a)(2), MEUS also submits an application for interim waiver of the applicable test procedures for the S&L Class CITY MULTI models listed above. DOE's regulations contain provisions allowing DOE to grant an interim waiver from the test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures.[22] As DOE has previously stated, ''an Interim Waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.'' [23]

MEUS will experience economic hardship if the application for interim waiver is denied. Additionally, precedent indicates that DOE will likely grant MEUS's petition for waiver. Finally, it is in the public interest to grant an interim waiver. Therefore, MEUS respectfully requests DOE to grant the application for interim waiver.

MEUS plans to introduce the new S&L Class products into the U.S. market in September 2008. The procedure for granting a petition for waiver can be a time-consuming process—DOE must publish the petition in the **Federal Register**, allow time for public comment, and then consider any comments before it makes a decision. Thus, the process typically takes a number of months. If an interim waiver is not granted, MEUS will suffer economic hardship because MEUS will be required to delay its introduction of these products to U.S. customers.

In addition, DOE will likely grant MEUS's petition for waiver. As described above, the design characteristics which prevented testing of the basic R22, R410A, WR2 and WY products are present for the new S&L Class models as well. The best evidence that DOE is likely to grant this waiver petition is the fact that it granted similar petitions in the R22 Waiver and R410A Waiver. In addition, DOE granted an interim waiver for the WR2 and WY products based on the fact that the ''identical testing problems [made] it likely that MEUS' Petition for Waiver will be granted.'' [24]

Finally, DOE's regulations state that the Assistant Secretary may grant an interim waiver if he determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for the Petition for Waiver. In response to MEUS's Application for Interim Waiver for its WR2 and WY products, DOE stated that ''in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.'' [25] MEUS's S&L Class CITY MULTI products are similar to the R22, R410A, WR2 and WY CITY MULTI products. Thus, it would be in the public interest to grant the requested interim waiver to allow MEUS to test and rate similar products on a comparable basis.

X. Conclusion

MEUS seeks a waiver of the applicable test procedures for the products listed in Section IV above. Such a waiver is necessary because the basic S&L Class CITY MULTI models ''contain[] one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [26] MEUS respectfully asks the Department of Energy to grant a waiver from the test procedures until such time as an appropriate test procedure is developed and adopted for this class of commercial products. MEUS expects to continue working with AHRI and DOE to develop appropriate test procedures. MEUS further requests DOE to grant its request for an interim waiver while its Petition for Waiver is pending.

If you have any questions or would like to discuss this request, please contact Paul Doppel at (678) 376–2923 or Douglas Smith at (202) 298–1902. We greatly appreciate your attention to this matter.

Sincerely,

William Rau

Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
4300 Lawrenceville-Suwanee Road
Suwanee, GA 30024.

CERTIFICATE

I hereby certify that I have this day served the foregoing Petition for Waiver and Application for Interim Waiver upon the following companies known to Mitsubishi Electric & Electronics USA, Inc. to currently market systems in the United States which appear to be similar to the S&L CITY MULTI VRFZ system design. I have notified this manufacturer that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Daikin AC (Americas), Inc.
1645 Wallace Drive, Suite 110
Carrollton, TX 75006
Attn: Mike Bregenzer, VP and GM

LG Electronics U.S.A., Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632
Attn: Mark O'Donnell

Dated this 28th day of March 2008.

William Rau
Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
3400 Lawrenceville-Suwanee Road
Suwanee, GA 30024

APPENDIX 1—PROPOSED ALTERNATE TEST PROCEDURE

(A) MEUS shall be required to test the S&L Class products listed above according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431, except that:

(i) For each S&L Class outdoor unit, MEUS shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph.

(ii) For every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit that is matched with between 2 and 8 indoor units.

(ii) The indoor units shall—

[22] 10 CFR 431.401(a)(2).

[23] WR2/WY Interim Waiver at 17535, citing 10 CFR 431.401(e)(3). *See also Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–012)*, 71 FR 14858 at 14860 (Mar. 24, 2006); and *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Samsung Air Conditioning From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–009)*, 70 FR 9629 at 9630 (Feb. 28, 2005).

[24] WR2/WY Interim Waiver at 17535.

[25] WR2/WY Interim Waiver at 17535.

[26] 10 CFR 431.201(a)(1).

(a) Represent the highest sales volume type models;

(b) Together, have a nominal cooling capacity between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity greater than 50% of the nominal cooling capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) Representations. MEUS may make representations about the energy efficiency of the S&L Class, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For S&L Class combinations utilizing a single outdoor unit that has been tested in accordance with this alternate test procedure, MEUS may make representations based on these test results.

(ii) For S&L Class combinations utilizing a single outdoor unit that has not been tested, MEUS may make representations which are based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(iii) For S&L Class combinations utilizing multiple outdoor units that have been tested in accordance with this alternate test procedure, MEUS may make representations based on those test results.

(iv) For S&L Class combinations utilizing multiple outdoor units that have not been tested, MEUS may make representations which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings for the tested combinations for each of the individual outdoor units used in the system, as determined in accordance with the provisions of this alternate test procedure.

[FR Doc. E8–29335 Filed 12–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2242]

Eugene Water and Electric Board; Notice of Authorization for Continued Project Operation

December 4, 2008.

On November 24, 2006, Eugene Water and Electric Board, licensee for the Carmen-Smith Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Carmen-Smith Hydroelectric Project is located on McKenzie River in Lane and Linn Counties, near McKenzie Bridge, Oregon.

The license for Project No. 2242 was issued for a period ending November 30, 2008. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2242 is issued to the Eugene Water and Electric Board for a period effective December 1, 2008 through November 30, 2009, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2009, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Eugene Water and Electric Board is authorized to continue operation of the Carmen-Smith Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29353 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–503–048]

Idaho Power Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 5, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–503–048.

c. *Date filed:* June 26, 2008.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* The Swan Falls Hydroelectric Project is located on the Snake River at river mile (RM) 457.7 in Ada and Owyhee counties of southwestern Idaho, about 35 miles southwest of Boise. The project occupies 528.84 acres of lands of the United States within the Snake River Birds of Prey National Conservation Area.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Tom Saldin, Senior Vice President and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707 (208) 388–2550.

i. *FERC Contact:* James Puglisi (202) 502–6241 or *james.puglisi@ferc.gov.*

j. Deadline for filing motions to intervene and protests 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Swan Falls Project consists of: (1) A 1,218-foot-long concrete gravity and rock-fill dam composed of an abutment embankment, a spillway section, a center island, the old powerhouse section, the intermediate dam, and the new powerhouse; (2) a 12-mile-long 1,525-acre reservoir with a normal maximum water surface elevation of 2,314 feet mean sea level (msl); (3) Twelve equal-width, concrete spillways with a capacity of 105,112 cubic feet per second (cfs) at reservoir elevation 2,318 msl, divided into two sections (western and eastern)—the western section, contiguous with the abutment embankment, is a gated, concrete ogee section with eight radial gates, and the eastern section, which is adjacent to the island, contains four radial gates; (4) two concrete flow channels; (5) two pit-bulb turbine generators with a nameplate rating of 25 megawatts; (6) a powerhouse completed in 1994; (7) a 1,400-foot-long, 120-foot-wide excavated tailrace channel; (8) a 33,600-kilovolt ampere main power transformer; (9) a 1.2-mile-long, 138-kilovolt transmission line; and (10) appurtenant equipment.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29359 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–25–000]

New Mexico Gas Company, Inc.; Public Service Company of New Mexico; Notice of Application To Transfer Natural Gas Act Section 3 Authorization and Presidential Permit

December 3, 2008.

On November 21, 2008, New Mexico Gas Company, Inc. (New Mexico Gas) and Public Service Company of New Mexico (PNM) filed a joint application in Docket No. CP09–25–000 pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, and the Secretary of Energy's Delegation Order No. 00–004.00A, effective May 16, 2006, seeking authorization to transfer PNM's existing NGA section 3 authorization and Presidential Permit [1] to New Mexico Gas, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to: Carol Gosain, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036, telephone (202) 429–6461, facsimile (202) 261–0614, or e-mail *cgosain@steptoe.com* (counsel for New Mexico Gas Company, Inc.) or M. Lisanne Crowley, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004, telephone (202) 274–2814, facsimile (202) 274–2814, or e-mail *lisanne.crowley@troutmansanders.com* (counsel for Public Service Company of New Mexico).

Specifically, New Mexico Gas and PNM request the Commission to issue an order: (1) Transferring PNM's NGA section 3 authorization and Presidential Permit to New Mexico Gas for the construction, operation, and maintenance of facilities which would be used to export natural gas at the International Border between Santa Teresa, Dona Ana County, New Mexico, and the State of Chihuahua, Mexico; and (2) authorizing the assignment of PNM's August 6, 1993, Presidential Permit to New Mexico Gas for the operation and maintenance of facilities at the Chihuahua, Mexico/New Mexico, export point for the purpose of exporting and importing natural gas between the United States and Mexico.

The proposed export facilities consist of (1) A meter station near the town of Santa Teresa, Dona Ana County, New Mexico, (2) approximately 150 feet of 8-inch diameter pipeline in a 50-foot wide right-of-way, and (3) a delivery point at the crossing of the International Boundary Line between Dona Ana

[1] 64 FERC ¶ 61,226 (1993).

County, New Mexico, and the State of Chihuahua, Mexico.

New Mexico Gas states that it anticipates the service it would provide via the border crossing facilities would be exempt from the provisions of the NGA pursuant to section 1(c). In the event that New Mexico Gas uses the subject border facilities to import, as opposed to export, natural gas, its transportation of such gas would either be exempt from the provisions of the NGA pursuant to section 1(c) or it would be provided pursuant to Section 284.224 of the Commission's regulations and New Mexico Gas's limited jurisdiction blanket certificate issued in Docket No. CP08–393–000.[2]

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: December 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29348 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

[2] 124 FERC ¶ 61,194 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 3, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–383–089.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Seventh Revised Sheet 1404 *et al.* to FERC Gas Tariff 1R3.

Filed Date: 12/1/2008.

Accession Number: 20081202–0168.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP98–18–038.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Second Revised Sheet 6L to its FERC Gas Tariff 1R1.

Filed Date: 12/1/2008.

Accession Number: 20081202–0167.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP00–445–022.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline LP submits Fifteenth Revised Sheet 11 *et al* to its FERC Gas Tariff, Original Volume 1.

Filed Date: 11/28/2008.

Accession Number: 20081202–0166.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 10, 2008.

Docket Numbers: RP08–97–004.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits 2nd Sub Eighteenth Revised Sheet 570 to its FERC Gas Tariff, Original Volume 2.

Filed Date: 12/1/2008.

Accession Number: 20081202–0165.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–16–003.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits Substitute First Revised Sheet 20 *et al* to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/2/2008.

Accession Number: 20081202–0159.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–124–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Forty-Sixth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 1/1/09.

Filed Date: 11/28/2008.

Accession Number: 20081202–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 10, 2008.

Docket Numbers: RP09–125–000.

Applicants: National Fuel Gas Supply Corporation

Description: National Fuel Gas Supply Corporation submits 122nd Revised Sheet 9 to its FERC Gas Tariff 1R4.

Filed Date: 12/1/2008.

Accession Number: 20081202–0164.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–126–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Thirty Third Revised Sheet 8 to its FERC Gas Tariff 1R4.

Filed Date: 12/1/2008.

Accession Number: 20081202–0163.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–127–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Twelfth Revised Sheet 43 to its FERC Gas Tariff 1R4.

Filed Date: 12/1/2008.

Accession Number: 20081202–0162.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–128–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 101 *et al* to FERC Gas Tariff 1R3, to be effective 1/1/09.

Filed Date: 12/1/2008.

Accession Number: 20081202–0161.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–129–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Second Revised Original Sheet 37 *et al* to its FERC Gas Tariff 1R3.

Filed Date: 12/1/2008.

Accession Number: 20081202–0169.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–130–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 100 *et al* to its FERC Gas Tariff 1R3.

Filed Date: 12/1/2008.

Accession Number: 20081202–0170.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–131–000.

Applicants: Quest Pipelines (KPC).

Description: Quest Pipelines submits the Annual Interruptible Revenue Crediting Report.

Filed Date: 12/2/2008.

Accession Number: 20081202–0158.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: RP09–132–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Co submits Twelfth Revised Sheet 1 *et al* to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/2/2008.

Accession Number: 20081202–0160.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: CP09–26–000.

Applicants: Source Gas Distribution LLC.

Description: Source Gas Distribution LLC submits application for a blanket certificate of public convenience and necessity authorizing the transportation and sale of natural gas pursuant to Section 7 of the Natural Gas Act.

Filed Date: 11/26/2008.

Accession Number: 20081201–0143.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–29337 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 1, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–272–085.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Third Revised Original Sheet 66B.01 *et al* as part of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 12/1/08.

Filed Date: 11/26/2008.

Accession Number: 20081128–0101.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP96–312–185.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits revised Exhibit A to the Gas Transportation Agreement pursuant to Rate Schedule FT-A, and a revised Negotiated Rate Letter Agreement dated 11/19/08 with Tennessee Valley Authority.

Filed Date: 11/25/2008.

Accession Number: 20081201–0073.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP97–28–022.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Eleventh Revised Sheet 1 *et al* to Second Revised Volume 2, to be effective 12/29/08.

Filed Date: 11/26/2008.

Accession Number: 20081128–0102.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP99–176–175.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America, LLC submits the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit with CenterPoint Energy Services, Inc etc.

Filed Date: 11/25/2008.

Accession Number: 20081201–0072.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP01–377–014.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits Twentieth Revised Sheet 99A as part of its FERC Gas Tariff, First Revised Volume 1, to be effective 1/1/09.

Filed Date: 11/26/2008.

Accession Number: 20081128–0103.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP03–36–038.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits Forty-First Revised Sheet 9 and Sixth Revised Sheet 10A as part of its FERC Gas Tariff, First Revised Volume 1, to be effective 12/1/08.

Filed Date: 11/26/2008.

Accession Number: 20081128–0104.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP08–25–001.

Applicants: Southern LNG, Inc.

Description: Southern LNG, Inc submits negotiated rate agreement, Exhibit D to LNG–1 Service Agreement SLNG9 dated 8/28/07 with BG LNG Services, LLC, to be effective 1/1/09.

Filed Date: 11/24/2008.

Accession Number: 20081201–0075.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–66–001.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Sub Second Revised Sheet 982 to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 12/12/08.

Filed Date: 11/25/2008.

Accession Number: 20081201–0074.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–104–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Second Revised Sheet 1 *et al* to FERC Gas Tariff, Original Volume 3.
Filed Date: 11/24/2008.
Accession Number: 20081126–0103.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–105–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits its annual fuel charge adjustment in compliance with Paragraph 37 of General Terms & Conditions of its FERC Gas Tariff, Third Revised Volume 1–A.
Filed Date: 11/24/2008.
Accession Number: 20081126–0104.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–106–000.
Applicants: Southern Natural Gas Company.
Description: Southern Natural Gas Company submits Sheet 1—8 to FERC Electric Rate Schedule 1 re Derivation of Surcharge Adjustment etc.
Filed Date: 11/24/2008
Accession Number: 20081126–0102.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–107–000.
Applicants: Wyoming Interstate Company, Ltd.
Description: Wyoming Interstate Company, Ltd submits Third Revised Sheet 77 to FERC Gas Tariff, Second Revised Volume 2.
Filed Date: 11/24/2008.
Accession Number: 20081126–0101.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–108–000.
Applicants: Dominion South Pipeline Company, LP.
Description: Dominion South Pipeline Company, LP's Report in Compliance with Ordering Paragraph D.
Filed Date: 11/24/2008.
Accession Number: 20081124–5171.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–109–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits Eighth Revised Sheet 41 *et al* to FERC Gas Tariff, First Revised Volume 1, to be effective 11/26/08.
Filed Date: 11/25/2008.
Accession Number: 20081201–0071.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–110–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits the 11 Revised Sheet 286 *et al* to FERC Gas Tariff, Fifth Revised Volume 1, in compliance with Order 712.
Filed Date: 11/25/2008.
Accession Number: 20081201–0070.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–111–000.
Applicants: Vector Pipeline L.P.
Description: Vector Pipeline, LP submits Third Revised Sheet 10 *et al* to FERC Gas Tariff, Original Volume 1, to be effective 1/1/09.
Filed Date: 11/25/2008.
Accession Number: 20081201–0069.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–112–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company submits documentation to support the continuation of its Fuel and Line Loss Allowance of 0.0% to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/09.
Filed Date: 11/25/2008.
Accession Number: 20081201–0068.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–113–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Great Lakes Gas Transmission Limited Partnership submits Eighth Revised Sheet 8A *et al* to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/09.
Filed Date: 11/25/2008.
Accession Number: 20081201–0067.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–114–000.
Applicants: Transcontinental Gas Pipe Line Corporation.
Description: Transcontinental Gas Pipe Line Corporation submits Fourth Revised Sheet No. 4 *et al* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 12/27/08.
Filed Date: 11/26/2008.
Accession Number: 20081128–0116.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–115–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc submits Ninth Revised Sheet 12 to FERC Gas Tariff, Original Volume 1.
Filed Date: 11/26/2008.
Accession Number: 20081128–0115.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–116–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits its cashout report for September 2007 through August 2008.
Filed Date: 11/26/2008.
Accession Number: 20081128–0114.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–117–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Seventeenth Revised Sheet 29 to its FERC Gas Tariff, Second Revised Volume 1A.
Filed Date: 11/26/2008.
Accession Number: 20081128–0113.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–118–000.
Applicants: Mojave Pipeline Company.
Description: Mojave Pipeline Company submits the Twenty-Fifth Revised Sheet 11 to its FERC Gas Tariff, Second Revised Volume 1A.
Filed Date: 11/26/2008.
Accession Number: 20081128–0112.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–119–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Seventh Revised Sheet 374 *et al* to FERC Gas Tariff, Second Revised Volume 1A.
Filed Date: 11/26/2008.
Accession Number: 20081128–0111.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–120–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company submits a firm Rate Schedule TF–HP Transportation Service Agreement with Shell Energy North America, LP.
Filed Date: 11/26/2008.
Accession Number: 20081128–0110.
Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–121–000.
Applicants: Colorado Interstate Gas Company.
Description: Colorado Interstate Gas Company reports that the workpapers submitted which are intended to

validate and to continue the existing reimbursement percentage for Lost, Unaccounted-For and Other and Fuel Gas.

Filed Date: 11/26/2008.

Accession Number: 20081128–0117.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: RP09–122–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Title Page to FERC Gas Tariff, First Revised Volume No. 1, to be effective 12/29/08.

Filed Date: 11/26/2008.

Accession Number: 20081128–0118.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–29338 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 01, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–699–007.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc submits Service Agreement 393 between Northern States Power Co *et al* and City of Sleepy Eye *etc.*

Filed Date: 11/24/2008.

Accession Number: 20081125–0202.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER05–1195–004.

Applicants: Silverhill LTD.

Description: Silverhill Ltd. submits updated tariff sheet with corrected effective date of 9/18/07 pursuant to FERC 11/20/08 letter order.

Filed Date: 11/26/2008.

Accession Number: 20081128–0105.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER06–456–018; ER06–1271–013; ER06–954–014; ER06–880–012; ER07–424–009; EL07–57–005.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an amendment to their 11/14/08 filing of revisions to Schedule 12-Appendix of their tariff to incorporate new cost responsibility assignments etc.

Filed Date: 11/25/2008.

Accession Number: 20081201–0096.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER06–739–018; ER02–537–020; ER03–983–016; ER06–738–018; ER07–501–016; ER07–758–013; ER08–649–010.

Applicants: East Coast Power Linden Holding, LLC; Shady Hills Power Company, L.L.C.; Fox Energy Company LLC; Cogen Technologies Linden Venture, L.P.; Birchwood Power Partners, L.P.; Inland Empire Energy Center, L.L.C.; EFS Parlin Holdings LLC.

Description: GE Companies Notice of Non-Material Change in Status (Order No. 652).

Filed Date: 11/28/2008.

Accession Number: 20081128–5009.

Comment Date: 5 p.m. Eastern Time on Friday, December 19, 2008.

Docket Numbers: ER08–54–008.

Applicants: ISO New England Inc.

Description: ISO New England Inc *et al* submits proposed revisions to Section I and II of the ISO Tariff pursuant to FERC 10/27/08 order.

Filed Date: 11/26/2008.

Accession Number: 20081128–0106.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER08–110–004.

Applicants: Starwood Power-Midway, LLC.

Description: Starwood Power-Midway, LLC submits Notification of Non-Material Change in Status relating to Starwood's market-based rate authorization.

Filed Date: 11/25/2008.

Accession Number: 20081126–0126.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER08–633–002.

Applicants: ISO New England Inc.

Description: ISO New England, Inc.'s Informational Filing with Proration Results.

Filed Date: 11/18/2008.

Accession Number: 20081118–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 9, 2008.

Docket Numbers: ER08–1006–002.

Applicants: Entergy Services, Inc.

Description: Entergy Mississippi, Inc submits an updated Appendix H to the Amended and Restated Interconnection and Operating Agreement between Southaven Power, LLC and EMI.

Filed Date: 11/24/2008.

Accession Number: 20081126–0122.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER08–1317–002.

Applicants: California Independent System Operator C.

Description: California Independent System Operator Corporation submits compliance filing in response to the Commission's 9/26/08 order addressing the CAISO's Generator Interconnection Process Reform.

Filed Date: 11/25/2008.

Accession Number: 20081201–0097.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER08–1457–002.

Applicants: PPL Electric Utilities Corporation.

Description: PPL Electric Utilities Corporation submits substitutes tariff sheets for Attachment H–8H to the PJM Interconnection, L.L.C. Open Access Transmission Tariff.

Filed Date: 11/26/2008.

Accession Number: 20081128–0107.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER08–1485–001.

Applicants: Midwest Independent System Transmission.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff in compliance with the Commission's 10/28/08 order re Foreign Guaranties.

Filed Date: 11/25/2008.

Accession Number: 20081126–0123

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER08–1486–002.

Applicants: Midwest Independent Transmission System

Description: Midwest Independent Transmission System Operator, Inc submits revisions to its Open Access Transmission and Energy Markets Tariff pursuant with the Commission's directives in the 10/28/08 order.

Filed Date: 11/26/2008.

Accession Number: 20081128–0108.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–138–001.

Applicants: FPL Energy Oliver Wind I, LLC.

Description: FPL Energy Oliver Wind I, LLC submits amended market-based rate tariff pursuant to Order 697–A, effective date 12/15/08.

Filed Date: 11/26/2008.

Accession Number: 20081128–0109.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–206–001

Applicants: Pasco Cogen, Ltd.

Description: Pasco Cogen, Ltd submits Substitute Original Sheet 2 and 3 to FERC Electric Tariff, Original Volume 1, effective 1/1/09.

Filed Date: 11/25/2008.

Accession Number: 20081126–0124.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–319–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits transmittal letter and amendments to the ISO Financial Assurance Policy for Market Participants and the ISO Financial Assurance Policy for FTR-Only Customers and DRP-Only Customers *etc.*

Filed Date: 11/20/2008.

Accession Number: 20081124–0315.

Comment Date: 5 p.m. Eastern Time on Thursday, December 11, 2008.

Docket Numbers: ER09–328–000.

Applicants: TransCanada Energy Sales Ltd.

Description: TransCanada Energy Sales Ltd submits its application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.

Filed Date: 11/25/2008.

Accession Number: 20081126–0135.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–346–000.

Applicants: American Electric Power Service Corporat.

Description: AEP Texas Central Co submits a new and revised sheets to the 1/11/05 Interconnection Agreement with LCRA Transmission Services Corporation etc.

Filed Date: 11/26/2008.

Accession Number: 20081201–0094.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–349–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Co submits First Revised Rate Schedule 66, an Intertie Agreement with Bonneville Power Administration which includes certain amendments to PGE's Rate Schedule FERC 66.

Filed Date: 11/26/2008.

Accession Number: 20081201–0095.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–30–001.

Applicants: Entergy Louisiana, LLC.

Description: Request of Entergy Louisiana, LLC, for Modification of Order Issued Under Section 204(a).

Filed Date: 11/28/2008.

Accession Number: 20081128–5025.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–83–001.

Applicants: Avista Corporation.

Description: Avista Corporation's Substitute Tariff Sheet for Attachment C to its OATT.

Filed Date: 11/26/2008.

Accession Number: 20081126–5163.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: OA08–23–001; OA08–28–002; OA08–31–002; OA08–40–001; OA08–45–002.

Applicants: Idaho Power Company, Deseret Generation & Transmission Co-op., Portland General Electric Company, NorthWestern Corporation, PacifiCorp.

Description: Errata to Order No. 890 Attachment K Joint Compliance Filing of the Funding Members of the Northern Tier Transmission Group and on 11/18/08 submitted a request that Second Substitute Original Sheet 346U to 346V *et al.* to FERC Electric Tariff be considered in place of those submitted on 10/29/08, pursuant to Order 890, its Joint Compliance Filing and under OA08–23 *et al.*

Filed Date: 11/13/08; 11/18/2008.

Accession Number: 20081113–5109; 20081121–0131.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 9, 2008.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–29339 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 26, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–18–000.

Applicants: Milford Power Company, LLC

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Milford Power Company, LLC.

Filed Date: 11/24/2008.

Accession Number: 20081124–5028.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2738–008; ER99–1004–009; ER01–1721–006; ER00–2740–008; ER02–564–006; ER06–653–003.

Applicants: Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Generation Company, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Power Marketing, LLC.

Description: Entergy Nuclear Affiliates submits revisions and clarification to the 6/30/08 filing as requested by FERC Staff.

Filed Date: 11/21/2008.

Accession Number: 20081124–0330.

Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER05–699–007.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc. submits Service Agreement 393 between Northern States Power Co *et al.* and City of Sleepy Eye etc.

Filed Date: 11/24/2008.

Accession Number: 20081125–0202.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER06–615–034.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits a revised pro forma sheet of the pro forma Reliability Must-Run Contract.

Filed Date: 11/21/2008.

Accession Number: 20081125–0106.

Comment Date: 5 p.m. Eastern Time on Friday, December 12, 2008.

Docket Numbers: ER08–1006–002.

Applicants: Entergy Services, Inc.

Description: Entergy Mississippi, Inc submits an updated Appendix H to the Amended and Restated Interconnection and Operating Agreement with Southaven Power, LLC.

Filed Date: 11/24/2008.

Accession Number: 20081126–0122.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER08–1410–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits its Refund Report.

Filed Date: 11/24/2008

Accession Number: 20081124–5076.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008

Docket Numbers: ER08–1435–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff in compliance with the Commission's 10/24/08 Order.

Filed Date: 11/24/2008.

Accession Number: 20081126–0121.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–117–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement with Stony Brook Wind, LLC *et al.*

Filed Date: 11/24/2008.

Accession Number: 20081126–0120.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–318–000.

Applicants: Safe Harbor Holding Company, LLC.

Description: Request of Safe Harbor Holding Co, LLC for authorization to sell energy and capacity at market-based rates etc.

Filed Date: 11/24/2008.

Accession Number: 20081126–0136.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–322–000; ER09–323–000; ER09–324–000; ER09–325–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits Revised Network Integration Transmission Service Agreement, Nos. 153, 154, 155, and 156.

Filed Date: 11/21/2008.

Accession Number: 20081125–0105.

Comment Date: 5 p.m. Eastern Time on Friday, December 12, 2008.

Docket Numbers: ER09–326–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits a non-conforming long-term Transmission Service Agreement between DE Carolinas *et al.*

Filed Date: 11/21/2008.

Accession Number: 20081125–0104.

Comment Date: 5 p.m. Eastern Time on Friday, December 12, 2008.

Docket Numbers: ER09–327–000.

Applicants: Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.

Description: Entergy Services, Inc on behalf of Entergy Gulf States Louisiana, LLC *et. al* submits Order No. 164-conformed versions of the Rate Schedules filed on 4/22/08.

Filed Date: 11/21/2008.

Accession Number: 20081125–0107.

Comment Date: 5 p.m. Eastern Time on Friday, December 12, 2008.

Docket Numbers: ER09–329–000.

Applicants: PSEG Power Connecticut LLC.

Description: PSEG Power Connecticut, LLC's request for limited waiver of Forward Capacity Market Rules and request for FERC Ruling within sixty days.

Filed Date: 11/24/2008.

Accession Number: 20081126–0134.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–330–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services, Inc., on behalf of Southwestern Public Service Company, submits a Connection Agreement with Golden Spread Electric Cooperative, Inc. *et. al.*

Filed Date: 11/24/2008.

Accession Number: 20081126–0133.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–331–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services, Inc., on behalf of Southwestern Public Service Co submits the proposed cancellation of 72 Point-to-Point Service Agreements.

Filed Date: 11/24/2008.

Accession Number: 20081126–0131.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–332–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits an executed Amended and Restated Metered Subsystem Agreement between the CAISO and the City of Anaheim, California.

Filed Date: 11/24/2008.

Accession Number: 20081126–0127.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–333–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co. submits Notice of Cancellation of the Operating Agreement with the Board of Trustees of Municipal Electric Utility of Algona, IA.

Filed Date: 11/24/2008.

Accession Number: 20081126–0132.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–334–000.

Applicants: Northern States Power Company.

Description: Northern States Power Companies submits notices of cancellation for two Non-Firm Transmission Service Agreements with Wisconsin Public Power, Inc.

Filed Date: 11/24/2008.

Accession Number: 20081126–0130.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER09–335–000.

Applicants: J.P. Morgan Ventures Energy Corporation.

Description: JP Morgan Ventures Energy Corp submits a Notice of Succession to inform FERC that it adopts Bear Energy's market based rate schedule, Rate Schedule 1.

Filed Date: 11/24/2008.

Accession Number: 20081126–0129.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–10–001.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Company submits a revised worksheet for computation of interest coverage.

Filed Date: 11/25/2008.

Accession Number: 20081125–5167.

Comment Date: 5 p.m. Eastern Time on Friday, December 5, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–40–004.

Applicants: Portland General Electric Company.

Description: Amendment to Application of Portland General Electric Company to add section 2.2 rollover rights language to PGE's Order 890 OATT compliance filing.

Filed Date: 11/17/2008.

Accession Number: 20081117–5187.

Comment Date: 5 p.m. Eastern Time on Monday, December 8, 2008.

Docket Numbers: OA08–96–002.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc. submits the Order No. 890 OATT Compliance Regarding Late Study Penalty Distribution Methodology.

Filed Date: 11/24/2008

Accession Number: 20081124–5170.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–29340 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 3, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–26–000.

Applicants: MidAmerican Energy Holdings Company, CER Generation II, LLC, West Valley Holdings, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, Request for Waiver of Certain Commission Requirements, and Requests for Confidential Treatment and Expedited Treatment.

Filed Date: 12/2/2008.

Accession Number: 20081202–5119.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 23, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–195–054; EL07–69–004.

Applicants: Western Systems Power Pool.

Description: Western Systems Power Pool, Inc submits revisions to the WSPP Agreement to comply with FERC's 9/29/08 Order.

Filed Date: 11/25/2008.

Accession Number: 20081201–0085.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER99–2156–017; ER97–2801–025; ER96–719–024.

Applicants: Cordova Energy Company LLC; PacifiCorp.

Description: Cordova Energy Company LLC, *et al.* submits the Updated Market Power Analysis.

Filed Date: 12/03/2008.

Accession Number: 20081203–5058.

Comment Date: 5 p.m. Eastern Time on Monday, February 2, 2008.

Docket Numbers: ER99–2923–005.
Applicants: Phelps Dodge Energy Services, LLC.
Description: Phelps Dodge Energy Services, LLC notifies the Commission of developments constituting non-material changes that do not affect the Project Company's market based rate status pursuant to Order 697 and 697–A.
Filed Date: 11/26/2008.
Accession Number: 20081202–0047.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER04–1221–003; ER03–49–005; ER99–970–007.
Applicants: Mankato Energy Center, LLC; Riverside Energy Center, LLC; RockGen Energy LLC.
Description: Mankato Energy Center, LLC et al request that the Commission waiver the 60-day prior notice requirement to permit the ASM-related revisions to become effective 1/6/09 pursuant to Order 697–A.
Filed Date: 11/26/2008.
Accession Number: 20081202–0046.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER08–1113–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits proposed tariff language to comply with the Commission's 9/19/08 Order.
Filed Date: 11/25/2008.
Accession Number: 20081201–0083.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER08–1172–002.
Applicants: Grand Ridge Energy LLC.
Description: Notification of Non-Material Change in Facts of Grand Ridge Energy LLC.
Filed Date: 11/25/2008.
Accession Number: 20081125–5064.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER08–1373–001.
Applicants: Otter Tail Power Company.
Description: Otter Tail Power Co submits revisions to its Control Area Services and Operations Tariff to comply with the Commission's 10/28/08 order.
Filed Date: 11/25/2008.
Accession Number: 20081201–0086.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–295–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co submits Original Sheet 169a *et al.* to FERC Electric Tariff, Original Volume 11, with a proposed effective 9/1/09 under ER09–295. Appendix IX.
Filed Date: 11/14/2008.
Accession Number: 20081203–0262.
Comment Date: 5 p.m. Eastern Time on Thursday, December 24, 2008.

Docket Numbers: ER09–297–001.
Applicants: Michigan Wind 1, LLC.
Description: Michigan Wind 1, LLC submits revisions to the tariff designation that was included in the Notice of Succession filed 11/13/08.
Filed Date: 11/25/2008.
Accession Number: 20081201–0084.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–336–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits Original Sheet 1234 to FERC Electric Tariff, Fifth Revised Volume 1 sheets to adopt Attachment AP of the SPP Open Access Transmission Tariff, to be effective 1/24/09.
Filed Date: 11/25/2008.
Accession Number: 20081201–0082.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–337–000.
Applicants: Ameren Energy Generating Company.
Description: Ameren Energy Generating Company submits proposed Rate Schedule FERC 5 and supporting cost data which specifies its revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service.
Filed Date: 11/25/2008.
Accession Number: 20081201–0081.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–338–000.
Applicants: Pinnacle West Marketing & Trading Co, LLC.
Description: Pinnacle West Marketing & Trading Co, LLC submits Notice of Cancellation of Rate Schedule FERC 1 that terminates their market-based rate tariff, to be effective 12/31/08.
Filed Date: 11/25/2008.
Accession Number: 20081201–0080.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–339–000.
Applicants: Crystal Lake Wind, LLC.
Description: Crystal Lake Wind, LLC resubmits the Shared Facilities Agreement with Crystal Lake Wind II, LLC dated 11/21/08, designated as FERC Rate Schedule 1, effective 12/1/08.
Filed Date: 11/25/2008.
Accession Number: 20081201–0079.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–340–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits revised tariff sheets indicating the cancellation of their Rate Schedule 158, Supplement 1 which is the Unit Sales Agreement with UNITIL Power Corp.
Filed Date: 11/25/2008.
Accession Number: 20081201–0078.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–341–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a revised rate sheet for the Interconnection Facilities Agreement with City of Moreno Valley etc.
Filed Date: 11/25/2008.
Accession Number: 20081201–0077.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–342–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits a partially executed Service Agreement for Network Integration Transmission Service with American Electric Power Service Corp et al.
Filed Date: 11/25/2008.
Accession Number: 20081201–0076.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: ER09–344–000.
Applicants: California Independent System Operator C.
Description: California Independent System Operator Corp submits an executed Amended and Restated Big Creek Physical Scheduling Plant Agreement with Southern California Edison Co.
Filed Date: 11/26/2008.
Accession Number: 20081201–0089.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–345–000.
Applicants: United Illuminating Company, The.
Description: The United Illuminating Co submits proposed modifications to Schedule 21–U1 of the ISO New England Inc Transmission, Markets and Services Tariff etc.
Filed Date: 11/26/2008.
Accession Number: 20081201–0088.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–347–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits the Foxborough Development Wholesale Distribution Load Interconnection Facilities Agreement *et al.* with City of Victorville.

Filed Date: 11/26/2008.
Accession Number: 20081201–0087.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–348–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc & Kansas Gas and Electric Co submits Third Revised Sheet 1 and 11 to First Revised Rate Schedule FERC 168, the Electric Power Supply Agreement, with the City of Arma, Kansas.
Filed Date: 11/26/2008.
Accession Number: 20081201–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–350–000.
Applicants: WSPP Inc.
Description: WSPP, Inc submits proposed revisions to their Agreement.
Filed Date: 11/26/2008.
Accession Number: 20081201–0091.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: ER09–351–000.
Applicants: New England Power Pool.
Description: New England Power Pool submits counterpart signature pages of the New England Power Pool Agreement *et al.* re NEPOOL Member Applications.
Filed Date: 11/26/2008.
Accession Number: 20081201–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–9–003.
Applicants: PJM Interconnection, L.L.C.
Description: Order No. 890 Compliance Filing under OA08–9.
Filed Date: 12/01/2008.
Accession Number: 20081201–5126.
Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–29370 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–62–000, CP07–63–000, CP07–64–000, CP07–65–000]

AES Sparrows Point LNG, LLC; Mid-Atlantic Express, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Sparrows Point LNG Terminal and Pipeline Project

December 5, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final Environmental Impact Statement (EIS) for the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, L.L.C. (collectively referred to as AES) in the above-referenced dockets. The Project facilities would be located in Baltimore, Harford, and Cecil Counties, Maryland, and in Lancaster and Chester Counties, Pennsylvania.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Army Corps of Engineers (COE), the U.S. Coast Guard, (Coast Guard), and the U.S. Environmental Protection Agency (EPA) are cooperating agencies for the development of this EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal and is involved in the NEPA analysis.

Based on the analysis included in the EIS, the FERC staff concludes that if the Project is constructed and operated in accordance with applicable laws and regulations, and with implementation of AES's proposed mitigation measures, and the additional mitigation measures recommended by staff, it would have mostly limited adverse environmental impacts.

AES proposes to construct and operate an LNG import terminal in an industrial port setting on Sparrows Point, in Baltimore County, Maryland. The LNG terminal would consist of facilities capable of unloading LNG ships, storing up to 480,000 cubic meters (m^3) of LNG (10.2 billion cubic feet of natural gas equivalent), vaporizing the LNG, and sending out natural gas at a baseload rate of 1.5 billion cubic feet per day (Bcfd). The maximum potential gas sendout capacity without expansion is 1.595 Bcfd. Mid-Atlantic Express proposes to interconnect its pipeline with three existing interstate natural gas pipelines by construction of a single, approximate 88-mile-long pipeline north, to the vicinity of Eagle, Pennsylvania.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities.

- A ship unloading facility, with two berths, capable of receiving LNG ships with capacities up to 217,000 m^3;
- Three 160,000 m^3 (net capacity) full-containment LNG storage tank, comprised of 9 percent nickel inner tank, pre-stressed concrete outer tank, and a concrete roof;
- A closed-loop shell and tube heat exchanger vaporization system;
- Various ancillary facilities including administrative offices, warehouse, main control room, security building, and a platform control room;
- Meter and regulation station within the LNG Terminal site;
- Dredging an approximate 118 acre area in the Patapsco River to −45 feet

below mean lower low water to accommodate the LNG vessels; and

• Approximately 88 miles of 30-inch-diameter natural gas pipeline (approximately 48 miles in Maryland and 40 miles in Pennsylvania), a pig launcher and receiver facility at the beginning and ending of the pipeline, 10 mainline valves, and three meter and regulation stations, one at each of three interconnection sites at the end of the pipeline.

The Project would also include the vessel transit from the LNG vessel's entrance into U.S. territorial waters, through its transit to and from the LNG terminal at Sparrows Point.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Only volume 1 of the final EIS, containing text of the analysis, was printed in hard copy. Volume 2, containing additional appendices, was produced as .pdf files on a compact disk (CD) that can be read by a computer with a CD–ROM drive. A limited number of hard copies and CDs of the final EIS are available from the FERC's Public Reference Room, identified above. This final EIS is also available for public viewing on the FERC's Internet Web site at *http://www.ferc.gov*, via the eLibrary link.

Copies of this final EIS have been mailed to Federal, State, and local agencies; elected officials; Indian tribes and Native American organizations with an interest in the project area; interveners; regional environmental organizations and public interest groups; affected landowners; local libraries and newspapers; and other interested parties. Hard copies of volume 1 were mailed to those who specifically requested them, while all others on the mailing list were sent both volumes of the EIS on CDs.

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372). The administrative public record for this proceeding to date is on the FERC Internet Web site (*http://www.ferc.gov*). Go to Documents & Filings and choose the eLibrary link. Under eLibrary, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (e.g., CP07–62). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at: *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY call 202–502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (*http://www.ferc.gov/docs-filing/esubscription.asp*).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29361 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC09–27–000]

Babcock & Brown LP; Babcock & Brown Renewable Holdings Inc.; Babcock & Brown Wind Partners U.S. LLC; Gamesa Energy USA, LLC; North Allegheny Wind, LLC; Notice of Filing

December 5, 2008.

Take notice that on December 4, 2008, Gamesa Energy USA, LLC (GEUSA), Babcock & Brown LP, Babcock & Brown Renewable Holdings Inc. (BBRHI), Babcock & Brown Wind Partners U.S. LLC, and North Allegheny Wind, LLC (North Allegheny) filed an Application For Order Authorizing Disposition of Jurisdictional Facilities, whereby GEUSA would sell all of the membership interest in North Allegheny to BBRHI or its designee, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR 33 *et seq.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29356 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL07–79–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

December 4, 2008.

Take notice that on November 26, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a Large Generator Interconnection Agreement between Endeavor Power Partners LLC, Interstate Power and Light Company, and the Midwest ISO, designated as Second Substitute Service Agreement No. 1632, under Midwest ISO's FERC Electric Tariff, Third Revised Vol. No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29352 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–7–001]

North American Electric Reliability Corporation; Notice of Filing

December 4, 2008.

On September 11, 2008, the North American Electric Reliability Corporation submitted a filing in compliance with the Commission's Order No. 713, issued on July 21, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29351 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES09–9–000]

Potomac Edison Company; Notice of Filing

December 5, 2008.

Take notice that on December 5, 2008, Potomac Edison Company filed a supplement to its October 30, 2008, Application filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29358 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–648–000]

Shell Energy North America (US), L.P.; Notice of Filing

December 5, 2008.

Take notice that on July 21, 2008, Shell Energy North America (US), L.P. (Shell) filed a request for clarification that its negotiated rate agreement with Tennessee Gas Pipeline Company (Tennessee), which was accepted in Docket No. RP96–312–144, qualifies for a regulatory right of first refusal. Shell asserts that, as a firm shipper currently paying the maximum tariff rate under a long term negotiated rate agreement, it should qualify for the regulatory right of first refusal established by Commission policy.

Shell filed its request for clarification in Docket Nos. RP96–312–144 and RM98–10. However, the Commission is re-docketing Shell's request as Docket No. RP08–648–000. The Commission is also re-docketing all subsequent pleadings relating to this matter in Docket No. RP08–648–000, and will treat the persons filing those pleadings

as parties to this proceeding, without the need to file a motion to intervene.[1]

Any other person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone not already a party but wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 this proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, December 12, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29355 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

[1] These include: (1) The July 30, 2008 pleading by Tennessee in Docket Nos. RP96–312–144 and RM98–10; (2) the August 5, 2008 pleading by Ocean State Power and Ocean State Power II (collectively, OSP) in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10–000; (3) the August 13, 2008 pleading by Tennessee in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10; (4) the August 20, 2008 pleading by the New England Local Distribution Companies in Docket Nos. RP96–312–144 and RM98–10–000; (5) the August 22, 2008 pleading by OSP in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10–000; (6) the September 3, 2008 pleading by Tennessee in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10; (7) the November 17, 2008 pleading by OSP in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10–000; (8) the November 25, 2008 pleading by Shell in Docket Nos. RP96–312–144 and RM98–10–000; and (9) the November 25, 2008 pleading by the New England Local Distribution Companies in Docket Nos. RP96–312–144, RP96–312–073, RP96–312–074, and RM98–10–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–206–000, ER09–206–001]

Pasco Cogen, Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2008.

This is a supplemental notice in the above-referenced proceeding of Pasco Cogen, Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2009.

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-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29349 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–343–000]

SC Landfill Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 5, 2008.

This is a supplemental notice in the above-referenced proceeding of SC Landfill Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is December 26, 2008.

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-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29357 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–328–000]

TransCanada Energy Sales, Ltd.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2008.

This is a supplemental notice in the above-referenced proceeding of TransCanada Energy Sales, Ltd.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2009.

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-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29350 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–185–000]

Weyerhaeuser NE Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 18, 2008.

This is a supplemental notice in the above-referenced proceeding of Weyerhaeuser NE Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is December 18, 2008.

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-referenced proceeding 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. E8–29342 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–7–000]

Enogex L.L.C.; Notice of Petition for Rate Approval

December 5, 2008.

Take notice that on November 21, 2008, Enogex L.L.C. (Enogex) filed pursuant to section 284.123(b)(2) of the Commission's regulations, filed a petition requesting that the Commission approve its rates pursuant to section 31(a)(2) of the Natural Gas Policy Act of 1978. Enogex proposes a fuel factor of 0.29% for the East Zone and a fuel factor of 0.94% for the West Zone of its system for Fuel Year 2009.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Friday, December 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29360 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–465–000]

ANR Pipeline Company; Revised Notice of Site Visit

December 4, 2008.

On December 10, 2008, staff of the Federal Energy Regulatory Commission will conduct a site visit of ANR Pipeline Company's proposed Wisconsin 2009 Expansion Project in Janesville, Wisconsin. The purpose of this site visit is to review the project's proposed and alternative routes, and the residential areas potentially affected by the project.

Please note that this Revised Notice of Site Visit revises the Notice of Site Visit previously issued on December 3, 2008. The site visit will take place one day earlier than previously announced.

Interested parties may accompany staff during its visit and should meet at 10:30 a.m. at: Hampton Inn Janesville, 2400 Fulton Street, Janesville, WI 53546.

Those planning to accompany staff during its visit must provide their own transportation.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29354 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

December 5, 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 collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA 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 January 12, 2009. 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167; and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC, 20554, or via Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov.* Include in the comments the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov*, and/or *PRA@fcc.gov.* To view a copy of this

information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time Per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; on occasion, semi-annual, weekly and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. Sections 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $1,251,175.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR Part 73, Subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–29368 Filed 12–10–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 3, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways

to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before February 9, 2009. 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0017.

Title: Application for a Low Power TV, TV Translator, or TV Booster Station License.

Form Number: FCC Form 347.

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: 300.

Estimated Time per Response: 1.5 hours

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i), 307, 308 and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 450 hours.

Total Annual Cost: $36,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The FCC Form 347 is used by licensees/permittees of low power television, TV translator or TV booster stations to apply for a station license. Data is used by FCC staff to confirm that the station has been built in the outstanding construction permit. Data from Form 347 is also included in any subsequent license to operate the station.

OMB Control Number: 3060–0627.

Title: Application for AM Broadcast Station License.

Form Number: FCC Form 302–AM.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not for profit institutions.

Number of Respondents and Responses: 380.

Estimated Time per Response: 4–20 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,800 hours.

Total Annual Costs: $10,075,600.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Licenses and permittees of AM broadcast stations are required to file FCC Form 302–AM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Additionally, when changes are made to an AM station that alter the resistance of the antenna system, a licensee must initiate a determination of the operating power by the direct method. The results of this are reported to the Commission using the FCC 302–AM. On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149. Among other things, this Report and Order substantially revised the FCC Form 302–AM to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also removed and narrowed overly burdensome questions. The FCC Form 302–AM will be supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. In addition, these changes will streamline the Commission's processing of FCC 302–AM applications. The Commission has also adopted a formal program of pre- and post-application grant random audits to preserve the integrity of our streamlined application process. The data is used by FCC staff to confirm that the station has been built to the terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–AM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–29369 Filed 12–10–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 3, 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 (PRA) of 1995, Public Law 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 February 9, 2009. 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0161.

Title: Section 73.61, AM Directional Antenna Field Strength Measurements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 2,268.

Estimated Time per Response: 1–4 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 36,020 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.61 requires that each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM stations using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations. AM licensees with directional antennas use the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–29371 Filed 12–10–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: December 17, 2008—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

(1) Budget Status Report.

Closed Session

(1) FMC Agreement No. 201199—Port Fee Services Agreement.

(2) Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders—Possible Update.

(3) Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Tanga S. FitzGibbon, Alternate Federal Register Liaison Officer, (202) 523–5725.

Tanga S. FitzGibbon,

Alternate Federal Register Liaison Officer.

[FR Doc. E8–29462 Filed 12–9–08; 4:15 pm]

BILLING CODE 6730–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting; Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation

December 16, 2008, 9:30 a.m.–11:30 p.m. U.S. Capitol, RHOB, Room 2212.

I. Call to order, Welcome, Approval of the Minutes from September 18, 2007 meeting.

II. Approval of Selection of 2008 Truman Scholars.

III. Executive Secretary Report: Development Fund.

IV. Report on 2008–2009 Truman-Albright Fellows program.

V. Approval of a FY2009 Budget.

VI. Old Business.

VII. New Business.

VIII. Adjournment.

Dated: December 8, 2008.

Frederick G. Slabach,

Executive Secretary.

[FR Doc. E8–29421 Filed 12–9–08; 11:15 am]

BILLING CODE 6820–AD–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0530]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 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. Written comments must be received within 60 days of this notice.

Project Proposal

Energy Employees Occupational Illness Compensation Program Act Dose Reconstruction Interviews and Forms, (OMB No. 0920–0530)—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384–7385) was enacted. This Act established a federal compensation program for employees of the Department of Energy (DOE) and certain of its contractors, subcontractors and vendors, who have suffered cancers and other designated illnesses as a result of exposures sustained in the production and testing of nuclear weapons.

Executive Order 13179, issued on December 7, 2000, delegated authorities assigned to ''the President'' under the Act to the Departments of Labor, Health and Human Services, Energy and Justice. The Department of Health and Human Services (DHHS) was delegated the responsibility of establishing methods for estimating radiation doses received by eligible claimants with cancer applying for compensation. NIOSH is applying the following methods to estimate the radiation doses of individuals applying for compensation.

In performance of its dose reconstruction responsibilities, under the Act, NIOSH is providing voluntary interview opportunities to claimants (or their survivors) individually and providing them with the opportunity to assist NIOSH in documenting the work history of the employee by characterizing the actual work tasks performed. In addition, NIOSH and the claimant may identify incidents that may have resulted in undocumented radiation exposures, characterizing radiological protection and monitoring practices, and identify co-workers and other witnesses as may be necessary to confirm undocumented information. In this process, NIOSH uses a computer assisted telephone interview (CATI) system, which allows interviews to be conducted more efficiently and quickly as opposed to a paper-based interview instrument. Both interviews are voluntary and failure to participate in either or both interviews will not have a negative effect on the claim, although voluntary participation may assist the claimant by adding important information that may not be otherwise available.

NIOSH uses the data collected in this process to complete an individual dose reconstruction that accounts, as fully as possible, for the radiation dose incurred by the employee in the line of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH also performs a brief, voluntary final interview with the claimant to explain the results and to allow the claimant to confirm or question the records NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant submits a form to confirm that the claimant has no further information to provide to NIOSH about the claim at this time. The form notifies the claimant that signing the form allows NIOSH to forward a dose reconstruction report to Department of Labor (DOL) and to the claimant, and closes the record on data used for the dose reconstruction. Signing this form does not indicate that the claimant agrees with the outcome of the dose reconstruction. The dose reconstruction results will be supplied to the claimant and to the DOL, the agency that will utilize them as one part of its determination of whether the claimant is eligible for compensation under the Act.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours)	Total response burden hours
Initial interview	4,200	1	1	4,200
Conclusion Form	8,400	1	5/60	700
Total				4,900

Dated: December 5, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–29322 Filed 12–10–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Centers for Disease Control and Prevention/Health Resources and Services Administration (CDC/HRSA) Advisory Committee on HIV and STD Prevention and Treatment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment, Department of Health and Human Services, has been renewed for a 2-year period through November 25, 2010.

FOR FURTHER INFORMATION CONTACT: contact Kevin Fenton, M.D., Ph.D., Executive Secretary, CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E07, Atlanta, Georgia 30333, telephone (404) 639–8000 or fax (404) 639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 4, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–29325 Filed 12–10–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0429] (formerly Docket No. 2007D–0496)

Draft Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Revision 1; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance entitled ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug

Consumer Protection Act: Revision 1.'' This revised draft guidance is intended to assist industry in complying with the labeling requirements for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application established by the Dietary Supplement and Nonprescription Drug Consumer Protection Act. The revision of the draft guidance changes the date on which FDA intends to begin enforcing these labeling requirements. Separate guidance, issued by the Center for Food Safety and Applied Nutrition on complying with the labeling requirements for dietary supplements, is announced elsewhere in this issue of the **Federal Register**.

DATES: You can submit written or electronic comments on this revised draft guidance, or any guidance, at any time (see 21 CFR 10.115(g)(5)).

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the revised draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance document.

FOR FURTHER INFORMATION CONTACT: Walter Ellenberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5488, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance entitled ''Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Revision 1.'' On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The law also amended the act to add section 502(x) (21 U.S.C. 352(x)), which requires the label of an OTC drug product marketed in the United States without an approved application to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive reports of serious adverse events associated with its use.

In the **Federal Register** of January 2, 2008 (73 FR 196), FDA issued a draft guidance document containing questions and answers relating to the new labeling requirements under Public Law 109–462 for OTC drugs marketed without an approved application. Although interested parties can comment on any guidance at any time, to ensure that the agency considered comments on the draft guidance before beginning work on the final version of the guidance, FDA requested that interested parties submit comments by March 3, 2008. FDA is still working to finalize the guidance.

Because the agency is still in the process of finalizing the guidance, FDA is issuing this revised draft guidance to notify industry that it intends to exercise enforcement discretion with regard to these labeling requirements for an additional 1-year period. The draft guidance issued on January 2, 2008, stated that FDA intended to begin enforcing the requirements of section 502(x) of the act for OTC drug products marketed without an approved application that are labeled on or after January 1, 2009. The revised draft guidance remains identical to the draft guidance issued on January 2, 2008, with respect to all topics except that it states that FDA intends to begin enforcing the labeling requirements of section 502(x) of the act for OTC drug products marketed without an approved application that are labeled on or after January 1, 2010.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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's notice in the **Federal Register** announcing the availability of the draft guidance gave notice of the proposed collections of information in the draft guidance. The notice included an analysis and burden estimate for these proposed collections of information and provided 60 days for public comment under the PRA. Because this revised draft guidance makes no change, other than to change the date on which FDA intends to begin enforcing the labeling requirements of section 502(x) of the act for OTC drug products marketed without an approved application, FDA is not providing a revised PRA analysis and burden estimate in this notice.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the revised draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*.

Dated: December 5, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–29301 Filed 12–8–08; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0209] (formerly Docket No. 2007D–0491)

Draft Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Revision 1; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance document entitled ''Draft Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Revision 1.'' This revised draft guidance is intended to assist the industry in complying with the labeling requirements prescribed for dietary supplement manufacturers, packers, and distributors by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA). The revised draft guidance changes the date on which FDA intends to begin enforcing these labeling requirements. Separate guidance, issued by the Center for Drug Evaluation and Research on labeling requirements for nonprescription (over-the-counter) human drugs marketed without an approved application, is announced elsewhere in this issue of the **Federal Register**.

DATES: You can submit written or electronic comments on this revised draft guidance, or any guidance, at any time (see 21 CFR 10.115(g)(5)).

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20750. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the revised draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the revised draft guidance to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance entitled ''Draft Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Revision 1.'' On December 22, 2006, the President signed into law the DSNDCPA (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The law also amended the act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive reports of serious adverse events associated with its use.

In the **Federal Register** of January 2, 2008 (73 FR 197), FDA announced the availability of a draft guidance entitled ''Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' Although interested parties can comment on any guidance at any time, to ensure that the agency would have the opportunity to consider comments on the draft guidance before it began work on the final version, FDA requested that interested parties submit comments on the draft guidance by March 3, 2008.

Because the agency is still in the process of finalizing the guidance, FDA is issuing this revised draft guidance to notify the dietary supplement industry and other members of the public that it intends to exercise enforcement discretion with regard to the labeling requirements of section 403(y) of the act for an additional 1-year period. The draft guidance issued on January 2, 2008 stated that FDA intended to begin enforcing the requirements of section 403(y) of the act for dietary supplements labeled on or after January 1, 2009. This revised draft guidance remains identical to the draft guidance issued on January 2, 2008, in all respects except that it states that FDA intends to begin enforcing the labeling requirements of section 403(y) of the act for dietary supplements labeled on or after January 1, 2010.

FDA is issuing this revised draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidance represents the agency's current thinking on labeling of dietary supplements as required by the DSNDCPA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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's notice in the **Federal Register** announcing the availability of the draft guidance (73 FR 197) also gave notice of the proposed collections of information in the draft guidance, included an analysis and burden estimate for these proposed collections of information, and provided 60 days for public comment under the PRA. Because this revised draft guidance makes no change, other than to change the date on which FDA intends to begin enforcing the labeling requirements of section 403(y) of the act for dietary supplements, FDA is not providing a revised PRA analysis and burden estimate in this document.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the revised draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the revised draft guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: December 5, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–29303 Filed 12–8–08; 11:15 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0025] (formerly Docket No. 2007D–0083)

Guidance for Industry and the Food and Drug Administration; Modifications to Devices Subject to Premarket Approval—the Premarket Approval Supplement Decisionmaking Process; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Modifications to Devices Subject to Premarket Approval (PMA)—the PMA Supplement Decision-Making Process.'' The purpose of this guidance is to help industry determine the type of regulatory submission that may be required when a device subject to PMA is modified.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Modifications to Devices Subject to Premarket Approval (PMA)—the PMA Supplement Decision-Making Process,'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 240–276–3151. The guidance document may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA developed this guidance to address modifications to devices subject to PMA applications, including changes to device design, device labeling, and the device manufacturing process. This guidance also can be applied when a legally marketed class III device is the subject of a recall or field corrective action and the manufacturer needs to change the device to assure its safety and effectiveness.

In the **Federal Register** of March 27, 2007 (72 FR 14282), FDA invited interested persons to comment on its draft guidance document entitled, ''Modifications to Devices Subject to Premarket Approval (PMA)—the PMA Supplement Decision-Making Process.'' The five general categories of comments received regarding the draft guidance are as follows: (1) Requests for a clearer interpretation of the regulations as to when a supplement is necessary (i.e., when a change to a device impacts or could impact safety and/or effectiveness); (2) requests for a detailed flowchart that would identify the type of supplement to be submitted based on any specific change for any device; (3) requests for specific definitions for some terms, such as ''substantial clinical data,'' ''significant change,'' and ''limited confirmatory clinical data;'' (4) requests for FDA to include 30-day supplements within the scope of the guidance; and (5) requests for additional examples for many supplement types, as well as for periodic reports. We considered all of the comments and revised the guidance when appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Modifications to Devices Subject to Premarket Approval (PMA)—the PMA Supplement Decision-Making Process.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Modifications to Devices Subject to Premarket Approval (PMA)—the PMA Supplement Decision-Making Process,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1584) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small

manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the CBER Internet site at *http://www.fda.gov/cber/guidelines.htm* or on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The information collection provisions in 21 CFR part 814, subpart B (Premarket Approval Applications (PMAs)) in this guidance have been approved under OMB control number 0910–0231. This approval expires November 30, 2010.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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: December 5, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–29330 Filed 12–11–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel CTSA 1.

Date: February 10–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel; CTSA–2.

Date: February 18–19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC /Rockville Hotel, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mohan Viswanathan, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *mv10f@nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel RCMI–COBRE.

Date: February 25–26, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Wash. DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Steven Birken, PhD, Scientific Revew Officer, Office of Review, National Center for Research Resources, 1 Democracy Plaza, Room 1078, 6701 Democracy Blvd., Bethesda, MD 20892, 301–435–0815, *birkens@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel; RCMI Infrastructures for Clinical and Translational Research (RCTR).

Date: March 4, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institute of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, Bethesda, MD 20892–4874, (301) 435–0814, *lambert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–29272 Filed 12–10–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Scientist Development Awards.

Date: December 18, 2008.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and

Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-Term Research Education Projects.

Date: December 18–19, 2008.

Time: 3:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Institutional National Research Service Awards.

Date: December 22, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RK II, 6701 Rockledge Drive, Rm. 7176, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roy L White, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924, 301–435–0310, *whiterl@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–29280 Filed 12–10–08; 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; Autoimmune Centers of Excellence Review.

Date: January 5–7, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 4, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–29278 Filed 12–10–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Consolidation of U.S. Citizenship and Immigration Services Background Check Service System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to consolidate one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate one Privacy Act system of records notice, Justice/INS–024 FD–258 Fingerprint Tracking System, July 31, 2000, into the existing U.S. Citizenship and Immigration Services system of records notice titled DHS–USCIS–002 U.S. Citizenship and Immigration Services Background Check Service, January 5, 2007.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile 1–866–466–5370.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is consolidating one U.S. Citizenship and Immigrations Services (USCIS) system of records notice titled, Justice/INS–024 FD–258 Fingerprint Tracking System (65 FR 46741 July 31, 2000) into the existing U.S. Citizenship and Immigration Services system of records notice titled DHS–USCIS–002 U.S. Citizenship and Immigration Services Background Check Service, (72 FR 31082 January 5, 2007).

Justice/INS–024 FD–258 Fingerprint Tracking System was originally established to determine the status of pending fingerprint submissions to the Federal Bureau of Investigation (FBI) and the results of the FBI check, and to account for and control the receipt and processing of fingerprints submitted to the FBI for a criminal background check.

Eliminating this system of records notice will have no adverse impact on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29260 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of removal of one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it will remove one system of records notice from its inventory of record systems because the United States Coast Guard no longer requires the system. The obsolete system is DOT/CG 632 Uniformed Services Identification and Privilege Card Record System (April 11, 2000).

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile 1–866–466–5370.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is removing one United States Coast Guard (USCG) system of records notice from its inventory of record systems.

DHS inherited this record system upon its creation in January of 2003. Upon review of its inventory of systems of records, DHS has determined it no longer needs or uses this system of records and is retiring the following: DOT/CG 632 Uniformed Services Identification and Privilege Card Record System (65 FR 19475 April 11, 2000).

DOT/CG 632 Uniformed Services Identification and Privilege Card Record System was originally established to determine if an applicant's eligibility for an uniformed services identification and privilege card.

Eliminating this system of records notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29262 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0121]

Privacy Act of 1974; United States Coast Guard—029 Notice of Arrival and Departure System of Records Notice

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security (DHS), United States Coast Guard (USCG) gives notice that it is establishing a system of records for retaining certain biographical information on all passenger and crew members on board U.S. and foreign vessels bound for or departing from ports or places in the United States. The system of records is for the collection and processing of Notice of Arrival and Departure (NOAD) information pursuant to 33 CFR part 160, subpart C.

This information is maintained within the Ship Arrival Notification System (SANS) as well as other USCG systems used for screening and vetting of vessels, vessel crews and passengers. USCG is publishing a system of records notice (SORN) in order to permit the traveling public greater access to individual information and a more comprehensive understanding of how and where information pertaining to them is collected and maintained. Elsewhere in today's **Federal Register**, DHS has issued a Notice of Proposed Rulemaking to exempt this SORN from certain provisions of the Privacy Act.

DATES: Submit comments on or before January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0121 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 please contact: David Roberts (202–475–3521) United States Coast Guard Privacy Officer, United States Coast Guard. For privacy issues contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

United States Coast Guard (USCG) collects information related to Notice of Arrival and Departure (NOAD) for U.S. vessels in commercial service and all foreign vessels that are bound for or departing from ports or places of the United States. This information is maintained within the SANS, as well as other USCG systems used for screening and vetting of vessels, primarily, but not exclusively, through Marine Information for Safety and Law Enforcement (MISLE, DOT/CG 679, April 22, 2002, 67 FR 19612) and the Maritime Awareness Global Network (MAGNet, DHS/USCG–061, May 15, 2008, 73 FR 28143). Information is retrieved from SANS by vessel and not by personal identifier; however, USCG uses the information taken from SANS in other systems to conduct screening and vetting pursuant to its mission for protecting and securing the maritime sector.

The information that is required to be collected and submitted through Electronic Notice of Arrival and Departure (eNOAD) can be found on routine arrival/departure documents that passengers and crewmembers must provide to DHS, when entering or departing the United States. eNOAD information includes complete name, date and place of birth, gender, country of citizenship, travel/mariner document type, number and country of issuance, expiration date, country of residence, status on board the vessel, and United States destination address (except for U.S. Citizens, lawful permanent residents, crew and those in transit).

Additionally, vessel carriers and operators must provide the vessel name, vessel country of registry/flag, International Maritime Organization number or other official number, voyage number, date of arrival/departure, and foreign port where the passengers and crew members began/terminate their sea transportation to the United States.

USCG will collect vessel particulars that are submitted by the vessel owner, agent, master, operator, or person in charge of a vessel in advance of a vessel's arrival or departure from the United States. The information will be used to perform counterterrorism, law enforcement, safety and security queries to identify risks to the vessel or to the United States.

The purpose of the information collection is to assess risk to vessels arriving to or departing from a U.S. port and to identify vessels that may pose a safety or security risk to the United States.

The information collection allows USCG to facilitate effectively and efficiently the entry and departure of vessels into and from the U.S. and assists the USCG with assigning priorities while conducting maritime safety and security missions in accordance with international and U.S. regulations.

Information in SANS is maintained for a period of no more than ten years or when no longer needed, whichever is longer, from the date of collection at

which time the data is deleted. The only NOAD information retained based initially on SANS data is information related to those individuals about whom derogatory information is revealed during the screening process. All other crew and passenger information vetted by USCG is immediately deleted. Should derogatory information be discovered by USCG either through TECS or USCG's own sources, such alerts and information would be communicated either through USCG's Maritime Awareness Global Network (MAGNet) system, or through the Coast Guard Messaging System (CGMS).[1] The SANS data is transmitted to the Intelligence Coordination Center (ICC) and stored in the CoastWatch Pre-Arrival Processing Program (CP3). SANS data within CP3 is destroyed or deleted when no longer needed for reference, or when ten years old, whichever is later.

Elsewhere in today's **Federal Register**, DHS has issued a Notice of Proposed Rulemaking to exempt this SORN from certain aspects of the Privacy Act.

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. SANS is not a system of records, but NOAD information maintained in SANS can be removed and used in other systems within USCG.

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 Number: DHS/USCG–029

SYSTEM NAME:

Notice of Arrival and Departure Information (NOAD)

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

SANS, the information technology system which receives NOAD information for USCG, is located at USCG Operations Systems Center in Kearneysville, WV. NOAD records may be maintained in SANS, or at computer terminals located at USCG Headquarters, Headquarters units, Area Offices, Sector Offices, Sector sub-unit Offices, and other locations where USCG authorized personnel may be posted to facilitate DHS' mission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Crew members who arrive and depart the U.S. by sea, and

B. Individuals associated with a vessel and whose information is submitted as part of a notice of arrival or notice of departure, including but not limited to vessel owners, operators, charterers, reporting parties, 24-hour contacts, company security officers, and

C. Persons in addition to crew who arrive and depart the U.S. by sea.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on vessels include: Name of vessel; name of registered owner; country of registry; call sign; International Maritime Organization (IMO) number or, if a vessel does not have an IMO number the official number; name of the operator; name of charterer; name of classification society; Maritime Mobile Service Identity (MMSI).

Records on arrival information as it pertains to the voyage includes: Names of last five foreign ports or places visited by the vessel; dates of arrival and departure for last five foreign ports or places visited; for each port or place of the U.S. to be visited, the name of the receiving facility, the port or place; for the port or place of the U.S. the estimated date and time of arrival; for the port or place in the U.S. the estimated date and time of departure; the location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting; the name and telephone number of a 24-hour point of contact (POC).

Records on departure information as it pertains to the voyage includes: The name of departing port or place of the U.S., the estimated date and time of departure; next port or place of call (including foreign), the estimated date and time of arrival; the name and telephone number of a 24-hour POC.

Records on crewmembers include: Full name; date of birth; nationality; identification type (for example, Passport, U.S. Alien Registration Card, U.S. Merchant Mariner Document, Foreign Mariner Document, Government Issued Picture ID (Canada), or Government Issued Picture ID (U.S.), number, issuing country, issue date, expiration date); position or duties on the vessel; where the crewmember embarked (list port or place and country); where the crewmember will disembark.

Records for each person onboard in addition to crew: Full name; date of birth; nationality; identification type (for example, passport, U.S. alien registration card, government issued picture ID (Canada), or government issued picture ID (U.S.), number, issuing country, issue date, expiration date); U.S. address information; where the person embarked (list port or place and country); where the person will disembark.

Records on cargo include: A general description of cargo other than Certain Dangerous Cargo (CDC) onboard the vessel (e.g., grain, container, oil, etc.); name of each CDC carried, including United Nations (UN) number, if applicable; amount of each CDC carried.

Records regarding the operational condition of equipment required by 33 CFR part 164: The date of issuance for the company's Document of Compliance certificate; the date of issuance of the vessel's Safety Management Certificate; the name of the Flag Administration, or recognized organization(s) representing the vessel flag administration, that issued those certificates.

[1] See *http://www.dhs.gov/privacy* for PIAs for MAGNet and the Law Enforcement Intelligence Database (LEIDB), a system used to analyze USCG message traffic.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 33 U.S.C. 1223, 46 U.S.C. 3717; 46 U.S.C. 12501; Federal Records Act of 1950, P.L. 90–620; The Maritime Transportation Act of 2002, P. L. 107–295; The Homeland Security Act of 2002, P. L. 107–296; 33 CFR part 160, 36 CFR chapter XII.

PURPOSE(S):

The purpose of this system is to maintain Notice of Arrival and Notice of Departure information to screen individuals associated with vessels entering or departing U.S. waterways for maritime safety, maritime security, maritime law enforcement, marine environmental protection, and other related 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 U.S. Department of Justice (DOJ) (including U.S. 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 (2) any employee of DHS in his/her official capacity, or (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee, or (4) the U.S. or any agency thereof;

B. To a Congressional office, for 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 purposes of performing an 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) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USCG 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, fraud, or harm to the security or integrity of this system, other systems, or programs (whether maintained by USCG or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with the USCG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended;

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 foreign government intelligence or counterterrorism agencies or components where USCG becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property, or other vital interests of a data subject and disclosure is proper and consistent with the official duties of the person making the disclosure;

J. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantined disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk;

K. 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, settlement negotiations, response to a subpoena, or in connection with criminal law proceedings;

L. 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 in the proper performance of the official duties of the officer making the disclosure;

M. To an appropriate Federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

N. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations where USCG is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance border security or identify other violations of law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

SANS data is stored electronically at the National Vessel Movement Center located at USCG Operations Systems Center in Kearneysville, WV. USCG uses an alternative storage facility for SANS historical logs and system backups. Derivative NOAD system data may be stored on CG SWIII computers or CG unit servers located at USCG Headquarters, Headquarters units, Area Offices, Sector Offices, Sector sub-unit Offices, and other locations where USCG authorized personnel may be posted to facilitate DHS' mission.

RETRIEVABILITY:

NOAD information maintained in SANS is not retrievable by name or other unique personal identifier. NOAD information is extracted from SANS by vessel and then retrieved by name, passport number, or other unique personal identifier.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include role-based access provisions, restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. USCG file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

The system manager, in addition, has the capability to maintain system back-ups for the purpose of supporting continuity of operations and the discrete need to isolate and copy specific data access transactions for the purpose of conducting security incident investigations.

All communication links with the USCG datacenter are encrypted. The databases are Certified and Accredited in accordance with the requirements of the Federal Information Security Management Act (FISMA).

RETENTION AND DISPOSAL:

Information on vessels maintained in SANS is destroyed or deleted when no longer needed for reference, or when ten years old, whichever is later. [National Archives and Records Administration (NARA) Request For Records Disposition Authority, Job No. N1–026–05–11]

Outputs, which include ad-hoc reports generated for local and immediate use to provide a variety of interested parties, for example, Captain of the Port and marine safety offices, sea marshals, Customs and Border Patrol (CBP), Immigration and Customs Enforcement (ICE)—with the necessary information to set up security zones, scheduling boarding and inspections activities, actions for non-compliance with regulations, and other activities in support of CG's mission to provide for safety and security of U.S. ports, will be deleted after five years if it is not a permanent record according to NARA.

The only NOAD information retained based initially on SANS data is information related to those individuals about whom derogatory information is revealed during the screening process. All other crew and passenger information vetted by USCG is immediately deleted. Should derogatory information be discovered by USCG either through TECS or USCG's own sources, such alerts and information would be communicated either through USCG's Maritime Awareness Global Network (MAGNet) system, or through the Coast Guard Messaging System (CGMS).[2] This information will be maintained for the life of the investigation or ten years, which ever is longer. The SANS data is transmitted to the ICC and stored in the CP3. SANS data within CP3 is destroyed or deleted when no longer needed for reference, or when ten years old, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, CG–26, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above. Your written request should include your name and mailing address. You may also provide any additional information that will assist in determining if there is a record relating to you if applicable, such as your Merchant Mariner License or document number, the name and identifying number (documentation number, state registration number, International Maritime Organization (IMO) number, etc.) of any vessel with which you have been associated and the name and address of any facility (including platforms, deep water ports, marinas, or terminals) with which you have been associated. The request must be signed by the individual, or his/her legal representative, and must be notarized to certify the identity of the requesting individual pursuant to 28 U.S.C. 1746 (unsworn declarations under penalty of perjury). Submit a written request identifying the record system and the category and types of records sought to the Executive Agent. Request can also be submitted via the FOI/Privacy Acts. See *http://www.uscg.mil/foia/* for additional information.

RECORD ACCESS PROCEDURES:

Write the System Manager at the address given above in accordance with the ''Notification Procedure''. Provide your full name and a description of the information you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access to their own records must comply with DHS's Privacy Act regulation on verification of identity (6 CFR 5.21(d)). Further information may also be found at *http://www.dhs.gov/foia* or at *http://www.uscg.mil/foia/*.

CONTESTING RECORD PROCEDURES:

See ''Notification'' procedures above.

RECORD SOURCE CATEGORIES:

The system contains data received from vessel carriers and operators regarding passengers and crewmembers who arrive in, depart from, transit through the U.S. on a vessel carrier covered by notice of arrival and departure regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2),(k) (1), and (k)(2), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29279 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

[2] *See www.dhs.gov/privacy* for PIAs for MAGNet and the Law Enforcement Intelligence Database (LEIDB), a system used to analyze USCG message traffic.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0089]

Privacy Act of 1974; USCIS–004 Verification Information System (VIS) System of Records Notice

AGENCY: Privacy Office, DHS.

ACTION: Notice to alter a Privacy Act system of records.

SUMMARY: The Department of Homeland Security (DHS) is republishing the Privacy Act system of records notice (SORN) for the Verification and Information System (VIS) replacing the previously published SORN of February 28, 2008 in order to: (1) Cover the expansion of VIS to collect and verify

United States (U.S.) Passports and Passport Cards from E-Verify users, (2) describe the expansion of the scope of the Systematic Alien Verification for Entitlements (SAVE) to include verification of citizenship and immigration status for any DHS lawful purpose, not just for government benefit granting purposes as described in previous PIAs, (3) cover the expansion of VIS to collect applications from victims of identity theft who would like to lock their Social Security Number (SSN) from further use in E-Verify, and (4) describe the expansion of the scope of E-Verify to indicate that it is no longer solely voluntary in some cases and no longer solely for new employees. These changes are more thoroughly spelled out in an accompanying Privacy Impact Assessment (PIA) which can be found on the DHS Privacy Web site (*http://www.dhs.gov/privacy*).

DATES: Written comments must be submitted on or before January 12, 2009.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2008–0089 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 system of records 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 additional information on the program please contact: Claire Stapleton, Privacy Branch Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 470 L'Enfant Plaza East, SW., Suite 8204, Washington, DC 20529. For 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:

I. USCIS Verification Information System

Congress mandated that USCIS establish a system that can be used to verify citizenship and immigration status of individuals seeking government benefits and establish a system for use by employers to determine whether an employee is authorized to work in the United States. Authority for having a system for verification of citizenship and immigration status of individuals seeking government benefits can be found in the Immigration Reform and Control Act of 1986 (IRCA), Public Law (Pub. L.) 99–603, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, 110 Stat. 2168, and in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009. Authority for having a system establish employment eligibility can be found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009. The Basic Pilot Program's operation has been repeatedly extended by Congress; See Basic Pilot Extension Act, Public Law 107–128 (2002); Basic Pilot Program Extension and Expansion Act, Public Law 108–156 (2003); Consolidated Security, Disaster Assistance, and Consolidated Appropriations Act, 2009, Public Law 110–329 (2008).

USCIS implemented these mandates through the Systematic Alien Verification for Entitlements (SAVE) program for government benefits and the ''Basic Pilot Program'' for determining whether an employee is authorized to work in the United States. The ''Basic Pilot Program'' was renamed ''E-Verify.'' ''E-Verify'' will be used in lieu of ''Basic Pilot'' for the remainder of this document.

VIS is the technical infrastructure that enables USCIS to operate SAVE and E-Verify. VIS is a nationally accessible database of selected immigration status information containing in excess of 100 million records. Previously government agencies used information from the SAVE program in order to determine whether an individual is eligible for any public benefit, license or credential based on individual's citizenship or immigration status. This SORN describes expansions to the SAVE program. Private employers and government users use E-Verify to confirm whether an employee is authorized to work in the United States.

A necessary corollary to having the ability to determine if an individual is authorized to gain government benefits or legal employment is the ability to determine if the verification processes are being abused or misused: And when appropriate, to seek legal or administrative redress against those committing fraud or otherwise misusing the verification processes. Consequently, the information in VIS is retained and analyzed for ten years, the length of time equivalent to the statute of limitations for the most typical types of fraud or misuse of this type of system or documents (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship or naturalization documents), or longer if the information is part of an active and ongoing investigation.

VIS is currently comprised of citizenship, immigration and employment status information from several DHS systems of records, including records contained in the U.S. Customs and Border Protection (CBP) Treasury Enforcement Communication Systems (TECS) (66 FR 52984), Biometric Storage System (BSS) (72 FR 17172), the USCIS Central Index System (CIS) (72 FR 1755), the USCIS Computer Linked Application Information Management System (CLAIMS 3) (62 FR 11919) and Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Information System (SEVIS) (70 FR 14477). VIS also includes information from the Social Security Administration's (SSA) NUMIDENT System (71 FR 1796).

This System of Records Notice is replacing the System of Records Notice previously published in the **Federal Register** on February 28, 2008 (73 FR 10793).

A. SAVE Program

The SAVE Program, which is supported by VIS, has previously been characterized as being limited to immigration and citizenship status verification for purposes of eligibility for any public benefit, license or credential—the benefit or ''entitlement'' referred to in the name of the program: Systematic Alien Verification for Entitlements (SAVE). However, section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) obligates USCIS to respond to inquiries ''by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law''.

Accordingly, to the extent that a federal, state, or local government entity has the legal authority to verify citizenship or immigration status, SAVE, as an access method to USCIS systems, is authorized to respond to the request. Specifically, in addition to the

verifications for purposes of granting government benefits, this includes verification for purposes of background investigations for individuals and cohabitants of the individuals undergoing background investigations. Government agencies input biographic information into VIS for status determinations. If VIS has a record pertaining to the individual, the government agency will receive limited biographic information on the citizenship and immigration status of the individual. If VIS does not have a record pertaining to the individual, VIS automatically notifies a USCIS employee. The USCIS employee then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would provide verification of citizenship and immigration status. If the USCIS employee finds additional relevant information, citizenship and immigration status data is provided to the requesting government agency user through VIS. The USCIS employee will also update the appropriate record in the USCIS CIS database. The REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. 30301 note) required all state Departments of Motor Vehicles (DMV) to routinely utilize the USCIS SAVE program to verify the legal immigration status of applicants for driver's licenses and identification cards. The Act originally set a deadline of May 11, 2008 for states to begin such verifications, but that deadline has been extended by Congress.

B. E-Verify

VIS also supports the E-Verify Program, a free program allowing participating employers to verify the employment eligibility of their employees. The program is a collaboration between the SSA and USCIS.

After an individual is hired by an employer participating in E-Verify and the individual completes the Employment Eligibility Verification Form I–9, the employer inputs information from sections 1 and 2 of the Form I–9 into the E-Verify portion of VIS. This query is first sent from VIS to SSA to verify Social Security information. If SSA cannot verify the employee's social security information, SSA will send a SSA Tentative Non-Confirmation (TNC) response to VIS, which in turn will notify the employer of SSA's inability to automatically verify the information provided by employee. The employer is then required to provide information to the employee about the employee's option to contest and the contact information for the SSA office in order to clear up the mismatch and resolve any issues.

If SSA is able to verify the employee information and the individual is a non-U.S. citizen, the VIS system continues the process by comparing the non-U.S. citizen's information with USCIS records to verify employment authorization. For any participating employer whose non-U.S. citizen employees present an I–551 or I–766 card for their Form I–9 documentation and whose information is successfully verified by SSA and USCIS, the employer will be able to use the USCIS photo tool to compare the photographs on the documents presented by the employee with the photographs and stored in the BSS system of records, if available. If VIS is able to return a photograph, the employer will then compare the photograph made available by the VIS photo tool and determine if it matches the photograph on the document presented by the employee. If the employer determines the photos do not match or if the employer cannot make a determination whether there is a photo match, the employer is then required to provide information to the employee about how the employee may contact USCIS to resolve any issues.

After the process of verifying the employment authorization concludes, regardless of whether or not the photo tool has been utilized, USCIS (through VIS) provides the employer with a case verification number and the disposition of whether an employee has been verified to be authorized to work. If a mismatch of information occurs with DHS, VIS automatically notifies an USCIS employee, who then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would help to establish employment authorization. If the USCIS employee cannot determine the person's work authorization, VIS sends a ''DHS Tentative Non-Confirmation'' (TNC) response notifying the employer that the employee has the option to contact USCIS in order to clarify the information discrepancy. DHS TNCs are issued when the USCIS employee is unable to determine the person's work authorization based on DHS immigration-related records. The employer may not terminate or take any adverse employment action against the employee on the basis of either a DHS or SSA TNC while the issue is being further investigated. If a Final Non-Confirmation (FNC) response is issued, the employer may terminate the employee or they may choose to retain the employee as long as the employer notifies DHS that it intends to do so, subject to potential penalties if the employee is subsequently found to be an unauthorized alien. If the employer does not choose to retain the employee after receiving a Final Non-Confirmation response it is not required to notify DHS.

Performing a verification query through the E-Verify system is only permissible after an offer of employment has been extended to an employee. The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I–9. For new employees, the employer must initiate the query no later than the end of the third business day after the new hire's actual start date. Under the terms governing employers' participation in E-Verify, the system cannot be used to pre-screen job applicants or to re-screen individuals whose work eligibility has already been confirmed by the employer through E-Verify.

C. Changes to VIS SORN

This SORN is being published to: (1) Cover the expansion of VIS to collect and verify information from U.S. Passports and Passport Cards from E-Verify users; (2) describe the expansion of the scope of SAVE to include verification of citizenship and immigration status for any DHS lawful purpose, not just for government benefit granting purposes as described in previous PIAs; (3) cover the expansion of VIS to collect applications from victims of identity theft who would like to lock their SSN from further use in E-Verify; and (4) describe the expansion of the scope of E-Verify to indicate that it is no longer solely voluntary in some cases and no longer solely for new employees in certain cases.

Expansion of VIS To Collect and Verify United States Passports and Passport Cards

E-Verify is used to determine whether an individual is authorized to work in the U.S. An employer who participates in E-Verify uses the information that they have previously collected for the Form I–9 process. Thus a U.S. citizen may present a Passport or Passport Card for purposes of proof of employment authorization for the Form I–9. The Passport Card is a new identity document issued by the Department of State (DOS) that will act as a passport in limited circumstances and will be acceptable for use in place of a U.S. passport for Form I–9 and E-Verify purposes. The information contained on

the Passport Card is the same information in the passport other than the document identification number. It is possible to have a U.S. Passport and a Passport Card. The numbers on the two documents would not be the same. The U.S. Passport and the Passport Card can both be used to establish identity and work authorization for Form I–9 purposes. Currently, an E-Verify employer captures the passport information (if presented as a List A document) from an employee; however, prior to this update the VIS system neither captured nor confirmed the passport number against government-held data.

Regardless of the identity document presented to the employer for the Form I–9, the VIS system requires an employee's Social Security Number (SSN) to verify employment eligibility. With this update, if an employee presents a U.S. Passport or Passport Card, VIS will initially check the employee's identity information, including Name, Date of Birth, citizenship status, and SSN, against the Social Security Administration (SSA) database; however, if the Social Security Administration (SSA) cannot verify the employee's citizenship status information, then VIS will verify the employee's Passport or Passport Card data against DOS data using an existing interface with Customs and Border Protection's (CBP) Treasury Enforcement Communications System (TECS). It may not be possible to determine an employee's work authorization solely through a query to the SSA database, for example, because SSA may not have been informed that an immigrant has become a U.S. citizen. Previously, such an inability to verify would have resulted in requiring the employee to visit an SSA Field Office and clarify citizenship status with the SSA. If the SSN is verified, VIS will verify the Passport number or Passport Card number so that an employer can have the capability to visually compare the photograph that appears on a Passport or Passport Card with the photograph that DOS has on file. E-Verify provides access to this information through the Photo Screening Tool which is described in the PIA published September 4, 2007. VIS will not retain a copy of the photograph as provided from the DOS data, merely a link that can be followed to retrieve the photograph in TECS should it need to be validated later. However, VIS may retain a hard copy of the photograph when an initial verification cannot be done by the employer and a secondary verification has to be done by the Verification Division Status Verifiers. This is the same procedure followed for other documents where the initial verification cannot be done by the employer.

Expansion of SAVE for Verification of Citizenship and Immigration Status

SAVE has previously been characterized as being limited to immigration and citizenship status verification for purposes of eligibility for any public benefit, license or credential—the benefit or ''entitlement'' is referred to in the name of the program Systematic Alien Verification for Entitlements (SAVE). However, section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) obligates USCIS to respond to inquiries ''by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.''

Accordingly, to the extent that a federal, state, or local government entity has the legal authority to verify citizenship or immigration status, SAVE, as an access method to USCIS systems, is authorized to respond to the request. Specifically, in addition to the verifications for purposes of granting government benefits, this includes verification for purposes of legally mandated background investigations. These legally mandated background investigations might be conducted by the OPM or other government entities where determination of immigration status is relevant to the reason for conducting the investigation, such as for Federal personnel security clearances or staff in sensitive critical infrastructure facilities in the private sector. For certain security clearances OPM may verify not only the individuals who are the subject of the background investigations, but also their family members and cohabitants (associated individuals) based on information the SAVE applicant provides to OPM. The associated individuals who are being verified through SAVE will only have notice of the verification by means of this SORN and accompanying PIA.

Expansion of VIS To Collect Application Information From Those Who Choose To Lock Their SSN From Further Use in E-Verify

JobLock is one part of an on-going effort by the Department of Homeland Security (DHS) to fight identity theft. This particular effort is targeted at victims of identity theft that have filed both a police report and a complaint with the Federal Trade Commission regarding identity theft that has been perpetrated against them. These victims will be given the opportunity to apply to USCIS to have their social security number (SSN) locked from further use in E-Verify. The application will be accessible through USCIS's E-filing system, and applicants will provide information to USCIS that will be validated against Federal Trade Commission's (FTC) Consumer Sentinel Database. The applicant is also required to provide USCIS with a copy of the police report issued by their local police jurisdiction. Once a JobLock application has been validated by a USCIS employee, a database table within VIS of locked SSNs (JobLock Table) will be populated, which will contain the SSN, the JobLock application information, and account information necessary to unlock the SSN (*i.e.* challenge questions and answers.)

Regardless of the identity document presented to the employer for the Form I–9, the VIS system requires an employee's SSN to verify employment eligibility. After the query information (name, date of birth, citizenship status, and SSN) has been verified by SSA, the system will check against the JobLock Table to verify whether the SSN has been locked from further use in E-Verify. If the SSN is not found in the JobLock Table, the query will be processed in the same manner it has been in the past. If the SSN queried upon is found in the JobLock Table, a DHS tentative non-confirmation would be issued by the system and the employee would be directed to contact a USCIS employee. The locking of an SSN will prevent an identity thief from using it to establish employment eligibility with E-Verify.

Change in the Scope of E-Verify

E-Verify, including its original iteration as Basic Pilot, has operated to date as a program for employers to verify employment eligibility of their new employees. Employers have not been permitted to verify the employment eligibility of existing employees. Recently, several state and Federal laws have required employer participation in the program for new hires in various circumstances. These laws range from some states requiring that all employers in that state participate in E-Verify, to other states requiring the state contractor workforce or government employers to participate. In addition, the Federal government requires that all newly-hired Federal employees be verified through E-Verify, and has adopted a federal procurement policy of contracting only with

employers that agree to use E-Verify to verify the work authorization of their new employees as well as all employees assigned to work on federal contracts. As a result, the population of E-Verify users has expanded, and will continue to expand. E-Verify will also begin to be used for some employers' existing workforce in addition to newly hired employees.

II. 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 an individual or by some identifying number, symbol, or other particular assigned to an individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals reading the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

III. Privacy Impact Assessments

DHS is publishing a PIA update to coincide with this SORN. This SORN reflects many of the changes that are discussed in this PIA.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

System of Records: DHS/USCIS–004

SYSTEM NAME:

U.S. Citizenship and Immigration Services Verification Information System (VIS).

SYSTEM LOCATION:

The Verification Information System (VIS) database is housed in a contractor-owned facility in Meriden, CT. The system is accessible via the Internet, Web services, Secure File Transfer Protocol (SFTP) batch, and through a computer via analog telephone line, and is publicly accessible to participants of the SAVE program and the E-Verify program, including authorized USCIS personnel, other authorized government users, participating employers, and other authorized users.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals, both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States including but not limited to individuals who have been lawfully admitted to the United States, individuals who have been granted U.S. citizenship and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* In addition, it contains information on cohabitants and relatives of subjects of SAVE background investigations conducted for OPM. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, whose employers have submitted to the E-Verify program their identification information. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, who have been victims of identity theft and have chosen to lock their Social Security number from further use in the E-Verify program.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Data originating from the USCIS Central Index System (CIS), including the following information about the individual who comes before USCIS: Alien Registration Number (A-Number), Name (last, first, middle), Date of birth, Date entered United States (entry date), Country of birth, Class of Admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), Provision of Law code cited for employment authorization, office code where the authorization was granted, Date employment authorization decision issued, Date employment authorization may begin (start date), Date employment authorization expires (expiration date), and Date employment authorization was denied (denial date).

B. Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A-Number, Name (last, first, middle), Date alien's status was changed (status change date), Date of birth, Class of Admission Code, Date admitted until, Country of citizenship, Port of entry, Date entered United States (entry date), Departure date, I–94 Number, Visa Number, and transaction link to passport photographs contained in TECS.

C. Data originating from the Redesigned Naturalization Automated Casework System (RNACS). RNACS is a database that includes information from individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications. The naturalization records in the RNACS database house information from 1986 to 1996. Information that identifies individuals named above, e.g., Name, Address, Date of birth, and Alien Registration Number (A-Number). Records in the system may also include information such as Date documents were filed or received in CIS, Status, Class of admission codes, and Locations of record.

D. Data originating from the Computer Linked Applications Information Management System (CLAIMS 4) including the following information about the individual; Name (First, Last), Date of birth, Social Security Number, and Naturalization date.

E. Data originating from the USCIS Biometric Storage System (BSS), including: Receipt number, Name (last, first, middle), Date of birth, Country of birth, Alien Registration Number (A-Number), Form number, for example Form I–551 (Lawful Permanent Resident card) or Form I–766 (Employment Authorization Document), Expiration date, and Photo.

F. Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: Receipt number, Name (last, first, middle), Date of birth, Country of birth, Class of admission code, Alien Registration Number (A-Number), I–94 number, Date entered United States (entry date), and Valid-To Date.

G. Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), Name (last, first, middle), Date of birth, Country of birth, Class of admission code, I–94 number, Date entered United States (entry date), and Valid-to Date.

H. Data originating from the Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, Tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.

I. Information collected from the benefit applicant by a federal, state, local or other benefit-issuing agency to facilitate immigration status verification

that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, Name (last, first, middle), Date of birth, User Case Number, DHS document type, DHS document expiration date, SEVIS ID and Visa Number.

J. Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the agency: Agency name, Address, Point(s) of Contact, Contact telephone number, Fax number, E-mail address, Type of benefit(s) the agency issues (i.e. Unemployment Insurance, Educational Assistance, Driver Licensing, Social Security Enumeration, etc.).

K. Information collected from the benefit-issuing agency about the Individual Agency User including: Name (last, first, middle), Phone Number, Fax Number, E-mail address, User ID for users within the Agency.

L. System-generated response, as a result of the SAVE verification process including: Case Verification Number, Entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from BSS, and Immigration status (e.g. Lawful Permanent Resident).

M. Information collected from the employee by the Employer User to facilitate employment eligibility verification may include the following about the Individual employee: Receipt Number, Visa Number, United States or Foreign Passport number, Passport Card number, Alien Registration Number (A-Number), I–94 Number, Name (last, first, middle initial, maiden), Social Security Number, Date of birth, Date of hire, Claimed citizenship status, Acceptable Form I–9 document type, Acceptable Form I–9 Document expiration date, and Passport, Passport Card, or visa photo.

N. Information Collected About the Employer, including: Company name, Physical Address, Employer Identification Number, North American Industry Classification System code, Federal contracting agency, Federal contract identifier, Number of employees, Number of sites, Parent company or Corporate company, Name of Contact(s), Phone Number, Fax Number, and E-Mail Address.

O. Information Collected about the Employer User (e.g., Identifying users of the system at the Employers), including: Name, Phone Number, Fax Number, E-mail address, and User ID.

P. System-generated response information, resulting from the E-Verify employment eligibility verification process, including: Case Verification Number; VIS generated response: Employment authorized, Tentative non-confirmation, Case in continuance, Final non-confirmation, Employment unauthorized, or DHS No Show; Disposition data from the employer includes Resolved Unauthorized/ Terminated, Self Terminated, Invalid Query, Employee not terminated, Resolved Authorized, and Request additional verification, which includes why additional verification is requested by the employer user.

Q. Information collected directly from individuals who have been the victim of identity theft who wish to prevent or deter further use of stolen identities in E-Verify, including: Police reports, Name, Social Security Number, Street address, E-mail address, and Other identity authentication information relevant to preventing or deterring further use of stolen identities.

AUTHORITY FOR MAINTENANCE OF RECORDS:

The authority for the maintenance of records in the system is found in 8 U.S.C. 1324a, 8 U.S.C. 1360, 42 U.S.C. 1320b–7 and the Immigration Reform and Control Act of 1986 (IRCA), Public Law (Pub. L.) 99–603, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, 110 Stat. 2168, Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009, and in Executive Order 12989, as amended by Executive Order 13465, June 6, 2008.

PURPOSE(S):

This system of records is used to provide immigration and citizenship status information to Federal, State, and local government agencies on any individual within the jurisdiction of the requesting agency, or on another individual associated with such an individual, for any purpose authorized by law. It is also used to provide employment authorization information to employers participating in the E-Verify Program. This system of records may also be used to monitor for the commission of fraud or other illegal activity related to misuse of either the SAVE or E-Verify program, including investigating duplicate registrations by employers, inappropriate registration by individuals posing as employers, verifications that are not performed within the required time limits, and cases referred to E-Verify or SAVE by the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). This system of records may also be used for preventing or deterring further use of stolen identities in E-Verify.

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, 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 a federal, state, tribal, or local government agency, or to a contractor acting on the agency's behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning: (1) Determination of eligibility for a federal, state, or local public benefit; (2) issuance of a license or grant; (3) government-issued credential; or (4) background investigation.

B. To employers participating in the E-Verify Employment Verification Program in order to verify the employment eligibility of their employees working in the United States.

C. To other Federal, State, tribal, and local government agencies seeking to verify or determine the citizenship or immigration status of any individual within the jurisdiction of the requesting agency as authorized or required by law.

D. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a DHS mission function related to this system of records, in compliance with the Privacy Act of 1974, as amended.

E. 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.

F. 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.

G. To a former employee of the Department for purposes of: (1) Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee

regarding a matter within that person's former area of responsibility.

H. To the DOJ, Civil Rights Division, for the purpose of responding to matters within the DOJ's jurisdiction to include allegations of fraud and/or nationality discrimination.

I. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) it is 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) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

J. To the United States Department of Justice (including United States Attorney offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court 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; (2) any employee of DHS in his or her official capacity; (3) any employee of DHS in his or her individual capacity where DOJ or DHS has agreed to represent said employee; or (4) the United States or any agency thereof;

K. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

L. To the Federal Trade Commission (FTC) to validate against the FTC's Consumer Sentinel Database.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in computer accessible storage media and hardcopy format.

RETRIEVABILITY:

Agency records are retrieved by name of applicant or other unique identifier to include: verification number, A-Number, I–94 Number, Visa Number, SEVIS ID, or by the submitting agency name. Employer records are retrieved by verification number, A-Number, I–94 Number, Receipt Number, Passport (U.S. or Foreign) number or Social Security Number of the employee, or by the submitting company name.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel on a need-to-know basis, using locks, and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties. Information maintained by DHS contractors for this system is also safeguarded in accordance with all applicable laws and regulations, including DHS IT security policies and FISMA. Access is controlled through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is being prepared to be sent to the National Archives and Records Administration for approval. Records collected in the process of establishing immigration and citizenship status or employment authorization are stored and retained in the VIS Repository for ten (10) years, from the date of the completion of the verification unless the records are part of an on-going investigation in which case they may be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possible using VIS (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship or naturalization documents). Records related to the prevention or deterrence of identity theft that are collected from individuals who voluntarily provide the information or that is obtained with the authorization of victims and potential victims of identity theft may be stored and retained in the VIS repository for the duration of the risk of identity theft, subject to the consent of the individual that authorized the collection. Such renewed consent shall be sought biannually.

Once the Web user views the photo, the image is discarded and not retained on the Web user's computer. Photocopies mailed to DHS in response to a TNC will be maintained as long as necessary to complete the verification process, and the duration of the benefit granted, but not limited to possible investigation and prosecution of fraud in the case of detected photo substitution.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Verification Division, U.S. Citizenship and Immigration Services, 470–490 L'Enfant Plaza East, SW., Suite 8206, Washington, DC 20024.

NOTIFICATION PROCEDURES:

Please address your inquiries about the VIS system in writing to the system manager identified above. To determine whether this system contains records relating to you, provide a written request containing the following information:

1. Identification of the record system;

2. Identification of the category and types of records sought; and

3. The requesting individual's signature and verification of identity pursuant to 28 U.S.C. 1746, which permits statements to be made under penalty of perjury. Alternatively, a notarized statement may be provided.

Address inquiries to the system manager at: Chief, Verification Division, U.S. Citizenship and Immigration Services, 470–490 L'Enfant Plaza East, SW., Suite 8206, Washington, DC 20024, or to the Freedom of Information/Privacy Act Office, USCIS, National Records Center, P.O. Box 6481010, Lee Summit, MO 64064–8010.

RECORD ACCESS PROCEDURES:

In order to gain access to one's information stored in the VIS database, a request for access must be made in writing and addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at USCIS. Individuals who are seeking information pertaining to them

are directed to clearly mark the envelope and letter ''Privacy Act Request.'' Within the text of the request, the subject of the record must provide his/her account number and/or the full name, date and place of birth, and notarized signature, and any other information which may assist in identifying and locating the record, and a return address. For convenience, individuals may obtain Form G–639, FOIA/PA Request, from the nearest DHS office and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at *http://www.uscis.gov*.

An individual who would like to file a FOIA/PA request to view their USCIS record may do so by sending the request to the following address: U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010.

CONTESTING RECORDS PROCEDURES:

Individuals have an opportunity to correct their data by submitting a redress request directly to the USCIS Privacy Officer who refers the redress request to the USCIS Office of Records. When a redress request is made, any appropriate change is added directly to the existing records stored in the underlying DHS system of records from which the information was obtained. Once the record is updated in the underlying DHS system of records, it is downloaded into VIS. If an applicant believes their file is incorrect but does not know which information is erroneous, the applicant may file a Privacy Act request to access their record as detailed in the section titled ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained comes from several sources: (A) Information derived from the following DHS systems of records, USCIS's CIS, CLAIMS3, CLAIMS4, RNACS, ISRS and/or BSS (when the latter system is deployed); CBP's TECS; and ICE's SEVIS, (B) Information derived from the SSA, (C) Information collected from agencies and employers about individuals seeking government benefits or employment with an employer using an employment verification program, (D) Information collected from system users at either the agency or the employer used to provide account access to the verification program, and (E) Information developed by VIS to identify possible issues of misuse or fraud.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29283 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0131]

Privacy Act of 1974; United States Immigration and Customs Enforcement-009 External Investigations 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 two legacy record systems originally published by the legacy Customs Service: Treasury/CS.129 Investigations Record System, October 18, 2001, and Treasury/CS.285 Automated Index to Central Investigative Files, October 18, 2001, into a Immigration and Customs Enforcement system of records notice titled External Investigations. In addition, DHS will now cover those Immigration and Customs Enforcement records previously covered by the Treasury/CS.244 Treasury Enforcement Communications System with this new system of records. 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 law enforcement investigatory records maintained by Immigration and Customs Enforcement. 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 system will be included in the Department's inventory of record systems.

DATES: Written comments must be submitted on or before January 12, 2009. This new system will be effective January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0131 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 issues please contact Lyn Rahilly, Privacy Officer, (202–731–3300), Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: *ICEPrivacy@dhs.gov.* For 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

Immigration and Customs Enforcement (ICE) is the largest investigative branch of the Department of Homeland Security (DHS). The agency was created after 9/11, by combining the law enforcement arms of the former Immigration and Naturalization Service (INS) and the former Customs Service, to more effectively enforce our immigration and customs laws and to protect the United States against terrorist attacks. ICE does this by targeting the people, money and materials that support terrorism and other criminal activities. ICE investigates on its own and in conjunction with other agencies a broad range of illegal activities, such as terrorism, organized crime, gangs, child exploitation, and intellectual property violations.

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (Nov. 25, 2002), DHS and ICE have relied on preexisting Privacy Act systems of records notices for the maintenance of records pertaining to law enforcement investigations performed by ICE. With the publication of the External Investigation Record System, DHS is consolidating and retiring two legacy U.S. Customs Service

system of records—Treasury/CS.129, Investigations Record System (66 FR 52984, October 18, 2001), and Treasury/CS.285, Automated Index to Central Investigative Files (66 FR 52984, October 18, 2001)—which ICE previously relied upon in maintaining its law enforcement investigatory records and information. The External Investigations Records System will also cover ICE records that are presently maintained in Treasury Enforcement Communications System (TECS) (66 FR 53029, October 18, 2001), a computerized information system. ICE uses an electronic case management component in TECS to store and manage law enforcement investigative records. These records contain investigative case files and other information associated with ongoing and closed ICE investigations into suspected violations of laws and regulations governing the movement of people and goods into and out of the U.S. and other laws within ICE's jurisdiction. ICE's data in TECS was previously covered by another legacy U.S. Customs Service records system titled Treasury/CS.244, Treasury Enforcement Communications System (66 FR 53029, October 18, 2001). With the establishment of the ICE External Investigations records system, ICE will no longer rely on Treasury/CS.244 to cover the ICE investigatory case file information maintained in TECS.

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 ICE's investigatory 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 system 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 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 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 lawful 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 personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE External Investigations System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

System of Records: DHS/ICE–009

SYSTEM NAME:

External Investigations.

SECURITY CLASSIFICATION:

Unclassified. Law Enforcement Sensitive (LES).

SYSTEM LOCATION:

Records are maintained at Immigration and Customs Enforcement Headquarters in Washington, DC and in field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

(1) Individuals who are the subjects of current or previous law enforcement investigations into violations of U.S. customs and immigration laws, as well as other laws and regulations within ICE's jurisdiction, including investigations led by other domestic or foreign agencies where ICE is providing support and assistance;

(2) Victims and witnesses in ICE law enforcement investigations described above;

(3) Fugitives with outstanding Federal or State warrants; and

(4) Operators of vehicles crossing the borders of the U.S. who are the subject of an ICE investigation, including but not limited to drivers of automobiles, private yacht masters, and private pilots arriving in the U.S.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include: Subject Information:

- Name and Aliases;
- Addresses;
- Social Security Number;
- Armed Forces Number;
- Alien Registration number;
- Date and place of birth;
- Citizenship;
- Passport and visa information;
- License information for owners and operators of vehicles, aircraft, and vessels;
- Information related to the subject's entry and exit of the United States; and
- Other biographical information.

Victim and Witness Records:

- Name;
- Contact information, including address and telephone numbers;
- Sworn statements, reports of interview, and testimony; and
- Other relevant biographical and background information, such as employment, and education.

Investigatory and Evidentiary Records:

- ICE case number;
- Incident reports;
- Reports and memoranda prepared by investigators during the course of the investigation or received from other agencies participating in or having information relevant to the investigation;
- Law enforcement intelligence reports;
- Electronic surveillance reports;
- Asset ownership information such as registration data and license data, for vehicles, vessels, merchandise, goods and other assets;
- Information about duties and penalties owed, assessed, and paid;
- Information about goods and merchandise, such as import and export forms and declarations filed, lab or analytical reports, valuation and classification of goods, and other relevant data;
- Correspondence and court filings;
- Information received from other governmental agencies, confidential sources, and other sources pertaining to the investigation;
- Any other evidence in any form, including papers, photographs, electronic recordings, electronic data, or video records that was obtained, seized, or otherwise lawfully acquired from any source during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1603; 19 U.S.C. 2072; 40

U.S.C. 1315; Title 18, United States Code; Title 19, United States Code; 31 CFR part 103; Title 40 United States Code.

PURPOSE(S):

The purpose of this system is to document external investigations performed by ICE pertaining to suspected violations of laws regulating the movement of people and goods into and out of the United States in addition to other violations of other laws within ICE's jurisdiction; to facilitate communication between ICE and foreign and domestic law enforcement agencies for the purpose of enforcement and administration of laws, including immigration and customs laws; and to provide appropriate notification to victims in accordance with Federal victim protection laws.

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 or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when:

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 DOJ 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) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with 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 an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. 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.

J. 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.

K. To Federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

L. Disclosure to victims regarding custodial information, such as release on bond, order of supervision, removal from the U.S., or death in custody, about an individual who is the subject of a criminal or immigration investigation, proceeding, or prosecution;

M. To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury, *e.g.*, disclosure of custodial release information to witnesses who have received threats from individuals in custody;

N. To international and foreign governmental authorities in accordance with law and formal or informal international arrangements.

O. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

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:

Records are retrieved by individual's name, date of birth, ICE investigative file number, Social Security Number, driver's license number, pilot's license number, vehicle license plate number, address, home telephone number, passport number, citizenship, country of birth, armed forces number, and date of entry into the United States.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security 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. The system maintains a real-time auditing function of individuals who access the system. Additional safeguards may vary by component and program.

RETENTION AND DISPOSAL:

Investigative files concerning munitions control cases are permanent records that are transferred to the Federal Records Center after one year, and then transferred to the National Archives and Records Administration (NARA) fifteen years after case closure. Records for other closed investigative cases are maintained in the investigating ICE field or headquarters office for either one year or five years after the end of the fiscal year in which the related investigative file is closed, depending on the category of the case. Those records are then transferred to the Federal Records Center where they are held for periods of time ranging from five to twenty five years, depending on the category of the case, after which they are destroyed. Destruction is by burning or shredding. DHS is proposing to retain electronic records associated with law enforcement investigations for 75 years after case closure, after which they would be destroyed. An updated schedule for investigative records is under review and will be submitted to NARA for approval.

SYSTEM MANAGER AND ADDRESS:

Immigration and Customs Enforcement, Mission Support Division, Unit Chief, Executive Information Unit/ Program Management Oversight (EIU/ PMO), Potomac Center North, 500 12th St., SW., Washington, DC 20024.

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 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 or perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose form the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of 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:

ICE may receive information in the course of its law enforcement investigations from nearly any source. Sources of information include: domestic and foreign governmental and quasi-governmental agencies and data systems, public records, commercial data aggregators, import and export records systems, immigration and alien admission records systems, members of the public, subjects of investigation, victims, witnesses, confidential sources, and those with knowledge of the alleged activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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), and (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(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). In addition, to the extent a record contains information from other exempt systems of records, ICE will rely on the exemptions claimed for those systems.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29395 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0114]

Privacy Act of 1974; United States Coast Guard—015 Legal Assistance Case Files 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 systems of record notices the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system, DOT/CG 511 Legal Assistance Case Files System, April 11, 2000, as a Department of Homeland Security system of records notice titled, United States Coast Guard Legal Assistance Case Files. This system will permit the United States Coast Guard to facilitate the provision of legal assistance to eligible clients seeking personal legal assistance. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the Department of Homeland Security and the United States Coast Guard's legal assistance case files record system. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before January 12, 2009. This new system will be effective January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0114 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 please contact: David Roberts (202–475–3521), Privacy Officer, United States Coast Guard. For 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:

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 United States Coast Guard (USCG) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern legal assistance case files pertaining to USCG military personnel seeking personal legal assistance.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a USCG system of records under the Privacy Act (5 U.S.C. 552a) that deals with USCG military personnel seeking legal assistance. This record system will allow DHS/USCG to collect and maintain records regarding legal assistance. The collection and maintenance of this information will assist DHS/USCG in providing personal legal assistance to USCG military personnel.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS is giving notice that it proposes to update and reissue the following legacy record system, DOT/CG 511 Legal Assistance Case Files System (65 FR 19475 April 11, 2000) as a DHS/USCG system of records notice titled, Legal Assistance Case Files. This system will permit DHS/USCG to facilitate the provision of legal assistance to eligible clients seeking personal legal assistance. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect DHS/USCG legal assistance case files record system. This new system 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 of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Legal Assistance Case Files 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 and to Congress.

System of Records: DHS/USCG–015

SYSTEM NAME:

United States Coast Guard Legal Assistance Case Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

- Military personnel of the armed forces who are on active duty (including reservists on active duty or scheduled for deployment).
- Military personnel and former military personnel entitled to retired or retainer pay or equivalent pay.
- Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.
- Dependents of military personnel (including dependents of reservists on active duty or scheduled for deployment) and retired military personnel described above.
- Other persons authorized by The Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name, rank, employee identification number (EMPLID), date of birth, duty station, telephone numbers, work and home addresses;
- Case number;
- Information concerning the personal matters handled by these offices for clients (e.g. executing wills, power of attorney, separation/divorce, landlord/tenant issues, consumer issues).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 10 U.S.C. 1044; and Commandant Instruction 5801.4E.

PURPOSE(S):

The purpose of this system is to facilitate the provisions of legal assistance to eligible clients seeking personal legal assistance.

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, subject to attorney ethical requirements regarding confidentiality and privilege, 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 DOJ 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.

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 alphabetically by name or case 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 destroyed or deleted 3 years after case is closed or when no longer needed by an attorney's state bar, whichever is later. (AUTH: N1–26–06–3, Item 1)

SYSTEM MANAGER AND ADDRESS:

Commandant, CG–094, Office of Judge Advocate General (JAG), United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

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 USCG, Commandant, CG–094, Office of Judge Advocate General (JAG), United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Specific FOIA contact information can be found at *http://www.dhs.gov/foia* under ''contacts.''

When seeking records about yourself from this system of records or any other USCG 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,

• Specify when you believe the records would have been created,

• 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 USCG 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 obtained directly from the client involved and during any subsequent investigation by the legal officer on behalf of the client.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29396 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0147]

Privacy Act of 1974; United States Coast Guard-007 Exceptional Family Member Program 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 Privacy Office's ongoing effort to review and update legacy system of record notices the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system, DOT/CG 641 Coast Guard Special Needs Program as a Department of Homeland Security system of records notice titled, United States Coast Guard Exceptional Family Member Program. This system will allow the Department of Homeland Security/United States Coast Guard to collect and maintain records on civilian, active duty, reserve, retired active duty and retired reserve military personnel, and their eligible dependents identified as exceptional family members. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the Department of Homeland Security/United States Coast Guard's exceptional family member record system. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before January 12, 2009. This new system will be effective January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0147 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 please contact: David Roberts (202–475–3521), Privacy Officer, United States Coast Guard. For 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:

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)/United States Coast Guard (USCG) have relied on preexisting Privacy Act system of records notices for the collection and maintenance of records that concern the USCG military and civilian personnel and, when applicable, their eligible dependents identified as exceptional family members.

As part of its efforts to streamline and consolidate its record systems, DHS/USCG is updating and reissuing a system of records under the Privacy Act (5 U.S.C. 552a) that deals with USCG military personnel, civilian personnel and their eligible dependents identified as exceptional family members. The system will allow DHS/USCG to collect and maintain records on USCG military personnel, civilian personnel and their eligible dependents identified as exceptional family members. The collection and maintenance of this information will assist DHS/USCG in meeting its obligation to assist military personnel, civilian personnel and their eligible dependents identified as exceptional family members.

In accordance with the Privacy Act of 1974, and as part of the DHS Privacy Office's ongoing effort to review and update legacy system of record notices the DHS is giving notice that it proposes to update and reissue the following legacy record system DOT/CG 641 Coast Guard Special Needs Program (65 FR 19476 4/11/2000) as a DHS/USCG system of records notice titled, USCG Exceptional Family Member Program. This system will allow the Department of Homeland Security/United States Coast Guard to collect and maintain records on civilians, active duty, reserve, retired active duty and retired reserve military personnel, and their eligible dependents identified as exceptional family members. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the DHS/USCG's exceptional family member record system. This new system will be included in DHS's inventory of record systems.

II. Health Insurance Portability and Accountability Act

This system of records contains individually identifiable health information. The Department of Defense Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. Department of Defense 6025.18–R may

place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

III. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is stored and retrieved by the name of the individual or by some identifying number such as property address, or mailing address symbol, assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. DHS extends administrative Privacy Act protections to all individuals where information is maintained on both U.S. citizens, lawful permanent residents, and visitors. 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 5.21.

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 of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/USCG Exceptional Family Member 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 and to Congress.

System of Records: DHS/USCG–007

SYSTEM NAME:

United States Coast Guard Exceptional Family Member Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at USCG Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard active duty, reserve, retired active duty, retired reserve, and civilian personnel and their eligible dependents who have a long-term physical or mental chronic condition that substantially limits one or more of the major life activities of an individual including professionally diagnosed medical, physical, psychological, and/or educational disabilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military or civilian personnel's name;
- Eligible dependent's name and birth date;
- Service member's, civilian's or eligible dependents home address, phone numbers, and e-mail information;
- Identification number (EMPLID); social security numbers of the service member or civilian personnel are currently in the case records (we will no longer be asking for those in the new policy, but the numbers will still be in all of the old files);
- Eligible dependent's diagnosed special need, including copies of medical, educational, and psychological reports, enrollment forms, correspondence and follow-up, and any other data relevant to the dependent's individual special needs' program files; and
- Benefits, including case management activities, and supports and services received related to the special need.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296, Federal Records Act, 44 U.S.C. 3101; 6 CFR Part 5; 5 U.S.C. 301, and COMNDTINST 1754.7 (series).

PURPOSE(S):

The purpose of this system is to administer exceptional family member needs requests of USCG military and civilian personnel to coordinate the exceptional family member program's medical care, mental health treatment, and to provide case management for USCG military and civilian personnel and eligible dependants identified as exceptional family members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records contains individually identifiable health information. The Department of Defense Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

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 DOJ 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 any member of the family when a signed release of information is documented in the case record, in furtherance of treating the family member with special needs.

I. To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, developmental disabilities, and other public health and welfare programs.

K. To the Federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or families with special medical or educational needs, or receiving early intervention or related services.

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 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 a Coast Guard military or civilian personnel's name and/or identification number (EMPLID),

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:

Case records are maintained at a decentralized location until the USCG military or civilian personnel is separated or retired, eligible family member is no longer an eligible dependent, or the eligible dependent is no longer diagnosed as having a special need. Upon separation or retirement of the USCG military or civilian personnel, the eligible family member is no longer an eligible dependent, or when the eligible dependent is no longer diagnosed as having a special need, the record will be transferred to Commandant, CG–1112. After a 3-year retention, the record is destroyed.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Work-Life, Director of Health, Safety and Work-Life, CG–11, United States Coast Guard, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any open record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Work-Life field office where the case record is maintained. Individuals seeking notification of and access to any closed record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief, Office of Work-Life, Director of Health, Safety and Work-Life, CG–11, United States Coast Guard, Washington, DC 20593–0001.

When seeking records about yourself or your minor dependent from this system of records or any other USCG 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 by you 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,
- Specify when you believe the records would have been created,
- 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 USCG 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 medical reports given to the USCG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29397 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0161]

Privacy Act of 1974; Science & Technology Directorate-002 Personnel Radiation Exposure 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 records notices, the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system as it related specifically to Department of Homeland Security/Directorate of Science & Technology activities, DOE–35 Personnel Radiation Exposure Records as a Department of Homeland Security system of records notice titled, Personnel Radiation Exposure Records. To the extent the Department of Energy continues to use this SORN, the Department of Homeland Security is not changing the SORN for the Department of Energy. Categories of individuals and categories of records have been reviewed and updated, and the routine uses of this legacy system of records notice have been updated to better reflect the Department of Homeland Security/Directorate of Science & Technology personnel radiation exposure record system. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before January 12, 2009. This new system will be effective January 12, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0161 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 please contact: Ian Rosenblum (202–254–6638), the Directorate of Science & Technology Safety, Health, Environmental, & Energy Programs Manager, the Directorate of Science & Technology. For 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:

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)/Directorate of Science & Technology (S&T) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern personnel who are exposed to radiation, uranium, transuranics, and other elements encountered in the nuclear industry.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a system of records under the Privacy Act (5 U.S.C. 552a) that deals with personnel who are exposed to radiation, uranium, transuranics, and other elements encountered in the nuclear industry. This record system will allow DHS/S&T to collect and maintain records regarding any individuals who are exposed to radiation, uranium, transuranics, and other elements encountered in the nuclear industry. The collection and maintenance of this information will assist DHS/S&T in meeting its obligation to record any individuals who are exposed to radiation, uranium, transuranics, and other elements encountered in the nuclear industry.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS is giving notice that it proposes to update and reissue the following legacy record system DOE–35 Personnel Radiation Exposure Records (60 FR 33510 June 28, 1995) as a DHS/S&T system of records notice titled, Personnel Radiation Exposure Records. To the extent the Department of Energy (DOE) continues to use this SORN, DHS is not changing the SORN for DOE. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the DHS/S&T personnel radiation exposure record system. This new system 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 of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Personnel Radiation Exposure Records 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 and to Congress.

System of Records: DHS/S&T–002

SYSTEM NAME:

The Directorate of Science & Technology Personnel Radiation Exposure Records

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the S&T Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include DHS/S&T personnel, contractor personnel, and any other persons who have access to certain DHS/S&T facilities and have been exposed to radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social security number;
- Date of birth;
- Gender;
- Alphanumeric code assigned as part of radiation analysis;
- Accident/investigation records
- Film badges used to measure radiation exposure;
- Dosimetry records;
- Previous employee records;
- Individual's radiation exposure record, including date(s) of exposure;
- Other records in connection with registries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101.

PURPOSE(S):

The purpose of this system is to document personnel and other individuals who are exposed to radiation, uranium, transuranics, and other elements encountered in the nuclear industry while at a DHS/S&T facility.

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 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 DOJ 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 the U.S. Navy to monitor radiation exposure of Naval and other personnel at Navy activities.

I. To the Department of Energy (DOE), States departments of labor, and industry groups to monitor radiation exposure of personnel.

J. To the Department of Defense to identify DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing, and for conducting epidemiological studies of radiation effects on identified individuals.

K. To the National Academy of Sciences, Center for Disease Control, National Institute of Occupational Safety and Health, the Department of Health and Human Services, the National Council on Radiation Protection and Measurements, and other organizations focused on this subject matter, to conduct epidemiological studies of the effects of radiation on individuals exposed to ionizing radiation.

L. To the National Institute of Occupational Safety and Health to conduct epidemiological studies of workers at DOE's Portsmouth Gaseous Diffusion Plant in Piketon, Ohio.

M. 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.

N. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of data subjects or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

O. 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, alphanumeric code (an identifier assigned to an individual by the vendor who performs the analysis of the radiation monitor), date(s) of exposure, and social security number.

SAFEGUARDS:

These records are protected by employing a multi-layer security approach to prevent unauthorized access to sensitive data through appropriate administrative, physical, and technical safeguards. Protective strategies such as implementing physical access controls at DHS facilities; ensuring confidentiality of communications using tools such as encryption, authentication of sending parties, and compartmentalizing databases; and employing auditing software and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties. All S&T electronic records are secured in full compliance with the requirements of DHS IT Security Program Handbook. This handbook establishes a comprehensive information security program.

RETENTION AND DISPOSAL:

S&T has submitted a proposed records retention and disposal schedule to NARA to maintain the records for seventy-five years. Health problems caused by radiation (such as cancer) can take years to manifest and can reoccur multiple times during an individual's life. Therefore, S&T will retain the records for 75 years so that, if an individual has problems they believe are attributable to radiation exposure received as a government employee, the government will have those records available and will be able to provide an accurate accounting of an individual's exposure. Until NARA approves a records retention and disposal schedule, S&T will retain the records indefinitely. Upon receiving the approved schedule, S&T will dispose of records according to NARA's instructions.

SYSTEM MANAGER AND ADDRESS:

S&T Safety, Health, Environmental, & Energy Programs Manager, Mail Stop: 2100, Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528.

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 S&T FOIA Coordinator, Mail Stop: 2100, Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528. Specific FOIA contact information can be found at *http://www.dhs.gov/foia* under ''contacts.''

When seeking records about yourself from this system of records or any other S&T 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,
- Specify when you believe the records would have been created,
- 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 S&T 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:

Individual, accident/incident investigations, film badges, dosimetry records, and previous employee records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–29398 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1122]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0048

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0048, Vessel Reporting Requirements. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 9, 2009.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–1122], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material

received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this Information Collection Request should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–1122], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. In response to your comments, we may revise the ICR or decide no to seek an extension of approval for this collection.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this Notice [USCG–2008–1122] in the Search box, and click ''Go >>.'' You may also visit the DMF in Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Vessel Reporting Requirements.

OMB Control Number: 1625–0048.

Summary: Owners, Charterers, Managing Operators, or Agents of U.S. vessels must immediately notify the Coast Guard if they believe the vessel may be lost or in danger. The Coast Guard uses this information to investigate the situation and, when necessary, plan appropriate search and rescue operations.

Need: Section 2306(a) of 46 U.S.C. requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if: (1) There is reason to believe that the vessel may have been lost or imperiled, or (2) more than 48 hours have passed since last receiving communication from the vessel. These reports must be followed by written confirmation submitted to the Coast Guard within 24 hours. The implementing regulations are contained in 46 CFR Part 4.

Forms: None.

Respondents: Businesses or other for profit organizations.

Frequency: On occasion.

Burden Estimate: The estimated annual burden remains 137 hours per year.

Dated: December 2, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–29362 Filed 12–10–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–66]

Mortgagee's Request for Extension of Time Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is used as a ''turnaround'' document by mortgage lenders to request extension of time and for HUD to provide a response. For audit purposes, regulations require mortgagees to maintain claim files for three years after a claim is paid. Information in the claim file includes copies of the HUD approval with related claim documents to verify that HUD has authorized extensions of time on specific cases.

DATES: *Comments Due Date: January 12, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0436) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or

telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time Requirements.

OMB Approval Number: 2502–0436.

Form Numbers: HUD–50012.

Description of the Need for the Information and Its Proposed Use: This information collection is used as a ''turnaround'' document by mortgage lenders to request extension of time and for HUD to provide a response. For audit purposes, regulations require mortgagees to maintain claim files for three years after a claim is paid. Information in the claim file includes copies of the HUD approval with related claim documents to verify that HUD has authorized extensions of time on specific cases.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	146	356		0.159		8,316

Total Estimated Burden Hours: 8,316.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 4, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–29307 Filed 12–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187-N–67]

Procedures for Appealing Section 8 Rent Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

When a rent increase for certain Section 8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review. HUD uses the information to determine whether to deny or allow Section 8 rent increases.

DATES: *Comments Due Date:* January 12, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0446) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Procedures for Appealing Section 8 Rent Adjustments.

OMB Approval Number: 2502–0446.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

When a rent increase for certain Section 8 subsidized projects is denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal. The appeal letter must be submitted to the Contract Administrator or the HUD Director for review. HUD uses the information to determine whether to deny or allow Section 8 rent increases.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	400	1		2		800

Total Estimated Burden Hours: 800.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 4, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–29305 Filed 12–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–68]

Single Family Mortgage Insurance on Hawaiian Homelands

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection documents the native status of Hawaiian borrowers to meet statutory requirements of the single-family mortgage insurance program for Hawaiian Homelands and to assist borrowers in resolving defaults.

DATES: *Comments Due Date: January 12, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0358) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance on Hawaiian Homelands.

OMB Approval Number: 2502–0358.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This information collection documents the native status of Hawaiian borrowers to meet statutory requirements of the single-family mortgage insurance program for Hawaiian Homelands and to assist borrowers in resolving defaults.

Frequency of Submission: On occasion, monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	430	3.37		0.244		354

Total Estimated Burden Hours: 354.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 4, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–29306 Filed 12–10–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0261; 40136–1265–0000–S3]

Delta and Breton National Wildlife Refuges, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for Delta and Breton National Wildlife Refuges. In the final CCP, we describe how we will manage these refuges for the next 15 years.

ADDRESSES: A copy of the CCP may be obtained by writing to: Mr. Jack Bohannan, 61389 Highway 434, Lacombe, LA 70445. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bohannan; Telephone: 985/882–2026.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Delta and Breton National Wildlife Refuges. We started this process through a notice in the **Federal Register** on May 30, 2006 (71 FR 30688). For more about the process, see that notice.

Delta National Wildlife Refuge, consisting of 48,799 acres of wetlands at the mouth of the Mississippi River, was established on November 19, 1935, by Executive Order 7229.

Breton National Wildlife Refuge, the second oldest national wildlife refuge in the United States, is a barrier island chain in Breton and Chandeleur Sounds in the Gulf of Mexico. It was established on October 4, 1903, by Executive Order 7938, signed by President Theodore Roosevelt.

We announce our decision and the availability of the final CCP and FONSI for Delta and Breton National Wildlife Refuges 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, which we included in the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA).

The CCP will guide us in managing these refuges for the next 15 years.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update this CCP at least every 15 years in accordance with the Improvement Act.

Comments

Approximately 100 copies of the Draft CCP/EA were made available for a 30-day review period as announced in the **Federal Register** on July 11, 2008 (73 FR 39978). Twenty-five public comments were received.

Selected Alternative

Three management alternatives were considered for Delta Refuge. Alternative A would have continued current management with no new actions to improve existing programs. Alternative B would have focused on expanding public use opportunities to the fullest extent possible. Alternative C, the preferred alternative and foundation of the CCP, will emphasize managing natural resources based on maintaining and improving wetland habitats with improved techniques; providing quality public use programs and wildlife-dependent recreational activities; and expanding the outreach program.

Three management alternatives were also considered for Breton Refuge. Alternative A would have continued current management practices. Alternative B would have focused on leaving the islands to the natural processes and weather events. Alternative C, the preferred alternative and also the foundation of the CCP, will emphasize working with partners to restore island habitat with large-scale projects, if considered feasible; improving outreach; and providing environmental education relating to the barrier islands to local schools.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 6, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–29320 Filed 12–10–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–5410–FR–B329; CACA 49299–01]

Conveyance of Federally-Owned Mineral Interests—California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of amended application and segregation of mineral interests.

SUMMARY: An amendment to a previously filed application for conveyance of the Federally-owned mineral interests in the tract of land described in this notice has been received. The amendment is dated September 2, 2008. The previous application, filed on August 31, 2007, was published in the **Federal Register** on Monday, December 17, 2007, at page 71430, in Volume 72, No. 241. The amendment describes Federally-owned mineral interests in the tracts of land described in this notice. Publication of this notice temporarily segregates the mineral interests in the land covered by the amendment from appropriation under the mining and mineral leasing laws while the application is being processed. This notice also will correct the name of the county in the previously issued notice.

FOR FURTHER INFORMATION CONTACT: Liz Easley, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4673.

Your comments are invited. Submit all comments in writing to Liz Easley at the address listed above. Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address, and other contact information, e.g. Internet address, FAX or phone number, from public review of disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection, in their entirety, all submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

SUPPLEMENTARY INFORMATION: The tract of land referred to in this notice consists of approximately 188.50 acres situated in Humboldt County, described as follows:

Humboldt Meridian, California

T. 1 S., R. 3 E.,
Sec. 1, SW¼SW¼, excepting therefrom that portion thereof lying southerly of the center of Larabee Creek;
Sec. 3, W½SE¼ and SE¼SE¼;
Sec. 11, NW¼NW¼.

Under certain conditions, section 209(b) of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719 (FLPMA) authorizes the sale and conveyance of the Federally-owned mineral interests in land when the non-mineral (or so called surface interest in land) is not Federally-owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

In accordance with section 209(b) of FLPMA, on September 15, 2008, the amended application was filed for the

sale and conveyance of the Federally-owned mineral interests in the above-described tracts of land. Publication of this notice segregates, subject to valid existing rights, the Federally-owned mineral interests in the land referenced above in this notice from appropriation under the general mining and mineral leasing laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR Part 2720. The segregative effect shall terminate: (i) Upon issuance of a patent or other document of conveyance as to such mineral interests; (ii) upon final rejection of the application; or (iii) two years from the date of filing the application, whichever occurs first.

The previously published **Federal Register** notice of Monday, December 17, 2007, at page 71430, in Volume 72, No. 241, states that the tracts of land described therein are situated in Nevada County. Nevada County is not correct. Humboldt County is the correct name of the county.

(*Authority:* 43 CFR 2720.1–1(b)).

Dated: December 5, 2008.

Robert Doyel,

Chief, Lands Management.

[FR Doc. E8–29323 Filed 12–10–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 101899]

Public Land Order No. 7719; Extension of Public Land Order No. 6693; Wyoming.

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6693 for an additional 20-year period. This extension is necessary to continue protection of the Natural Corrals Archeological Site in Sweetwater County, Wyoming.

DATES: *Effective Date:* December 9, 2008.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: The withdrawal extended by this order will expire on December 8, 2028, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 6693 (53 FR 49664, (1988)), which withdrew 357.34 acres of public land from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws to protect the Natural Corrals Archeological Site, is hereby extended for an additional 20-year period until December 8, 2028.

Authority: 43 CFR 2310.4.

Dated: November 20, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–29326 Filed 12–10–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0090]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of an information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until February 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE)

Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies that are recipients of MORE grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 260 respondents annually will complete the form within one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 255.75 hours annually.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 8, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–29363 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on November 17, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 10 new standards have been initiated and 19 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standarswire/sba/09-26-08.html* and *http://standards.ieee.org/standarswire/sba/11-07-08.html*.

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on July 7, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 31, 2008 (73 FR 44773).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–29298 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0004]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Revision of a currently approved collection, Number of Full-time Law Enforcement Employees as of October 31.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on October 10, 2008, Volume 73, Number 73, Page 60324, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 12, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Number of Full-time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 1–711, 1–711a, 1–711b; CJIS Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal and tribal law enforcement agencies.

This form is needed to collect information on the number of full-time civilian employees and sworn full-time law enforcement officers throughout the United States. Data are tabulated and published in the annual Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,738 law enforcement agency respondents; calculated estimates indicate 8 minutes per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 2,365 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 8, 2008.

Ms. Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–29364 Filed 12–10–08; 8:45 am]

BILLING CODE 4410–02–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 8, 2009.

Time: 9 a.m. to 5 p.m.

Room: 402.

Program: This meeting will review applications for NEH/DFG Symposia and Workshops Program, submitted to the Office of Digital Humanities, at the November 4, 2008 deadline.

2. *Date:* January 13, 2009.

Time: 8:30 a.m. to 5 p.m.

Room: 113, The John W. Kluge Center at the Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–4860.

Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs, at the July 15, 2008 deadline.

3. *Date:* January 15, 2009.

Time: 8:30 a.m. to 5 p.m.

Room: 113, The John W. Kluge Center at the Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–4860.

Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs, at the July 15, 2008 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–29258 Filed 12–10–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of December 15, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of December 15, 2008

Monday, December 15, 2008

1 p.m.

Briefing on Protection of the NRC Information Technology Infrastructure and Related Topics (Public Meeting followed by a Closed portion—Ex. 2).

The open portion of this meeting will be Web cast live at the Web address—*http:* //www.nrc.gov.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

Additional Information

This meeting was previously announced as an entirely closed meeting entitled ''Discussion of Management Issues (Closed—Ex. 2).'' The meeting has been rescheduled as a public meeting followed by a closed session. The start time remains the same at 1 p.m. on Monday, December 15, 2008.

The NRC Commission Meeting Schedule can be found on the Internet at: *http:* //www.nrc.gov/about-nrc/policy-making/schedule.html.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 5, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–29446 Filed 12–9–08; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0607]

Commonwealth of Virginia: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Virginia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Virginia.

SUMMARY: By letter dated June 12, 2008, Governor Timothy M. Kaine of Virginia requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the Commonwealth would assume, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Commonwealth's regulatory program. Comments are requested on the

proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Commonwealth's program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in the Commonwealth from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires December 22, 2008. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov.* Search on Docket ID: [NRC–2008–0607] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Virginia including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624, ML082470314, and ML083180102.

FOR FURTHER INFORMATION CONTACT: Ms. Monica L. Orendi, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–3938 or e-mail to *monica.orendi@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 35 States. The Agreement States currently regulate approximately 18,000 Agreement material licenses, while the NRC regulates approximately 4,000 licenses. Under the proposed Agreement, approximately 400 NRC licenses will transfer to the Commonwealth. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated June 12, 2008, Governor Kaine certified that the Commonwealth of Virginia has a program for the control of radiation hazards that is adequate to protect public health and safety within Virginia for the materials and activities specified in the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the Commonwealth requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials; and

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass.

The materials and activities the Commonwealth is not requesting authority over are:

(1) The regulation of extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material;

(2) The regulation of land disposal of byproduct material or special nuclear material waste received from other persons; and

(3) The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution.

(b) The proposed Agreement contains articles that:

(1) Specify the materials and activities over which authority is transferred;

(2) Specify the activities over which the Commission will retain regulatory authority;

(3) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(4) Commit the Commonwealth and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(5) Provide for the reciprocal recognition of licenses;

(6) Provide for the suspension or termination of the Agreement; and

(7) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Virginia.

(c) The regulatory program is authorized by law under the Code of Virginia (32.1–227—32.1–238). Section 32.1–235 provides the Governor with the authority to enter into an Agreement with the Commission. Virginia law contains provisions for the orderly

[1] The radioactive materials, sometimes referred to as ''Agreement materials'' are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(3) of the Act; (c) byproduct materials as defined in Section 11e.(4) of the Act; (d) source materials as defined in Section 11z. of the Act; and (e) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

transfer of regulatory authority over affected licensees from the NRC to the Commonwealth. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Commonwealth licenses until the licenses expire or are replaced by Commonwealth issued licenses. NRC licenses transferred to the Commonwealth which contain requirements for decommissioning and express intent to terminate the license when decommissioning has been completed under a Commission approved decommissioning plan will continue as Commonwealth licenses and will be terminated by the Commonwealth when the Commission approved decommissioning plan has been completed.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements. Under the proposed Agreement, the Commonwealth would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in the Commonwealth coincident with the effective date of the Agreement. Also, a notification of waiver termination would be provided in the **Federal Register** for the final Agreement.

(d) The NRC draft staff assessment finds that the Commonwealth's Division of Radiological Health, an organizational unit of the Virginia Department of Health (VDH), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the Commonwealth's Program for the Control of Agreement Materials

The NRC staff has examined the Commonwealth's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement.''

(a) Organization and Personnel. The Agreement materials program will be located within the existing Division of Radiological Health (DRH) of the VDH. The DRH will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DRH staff members are specified in the Commonwealth's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. All have had additional training and work experience in radiation protection. Supervisory level staff has at least seven years working experience in radiation protection.

The DRH performed and the NRC staff reviewed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the DRH's staff analysis, the DRH has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The DRH will employ a staff with at least the equivalent of 6.0 full-time professional/technical and administrative employees for the Agreement materials program.

The Commonwealth has indicated that the DRH has an adequate number of trained and qualified staff in place. The Commonwealth has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff are working with NRC license reviewers in the NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Virginia. DRH staff is also actively supplementing their experience through direct meetings, discussions, and facility walk-downs with NRC licensees in the Commonwealth, and through self-study, in-house training, and formal training.

Overall, the NRC staff believes that the DRH technical staff identified by the Commonwealth to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the Virginia Board of Health by Section 32.1–229 of the Code of Virginia, the DRH has the requisite authority to promulgate regulations for protection against radiation. The law provides DRH the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the Commonwealth adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into Virginia Administrative Code Title 12, Section 5–481. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain Commonwealth licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the Commonwealth. As a result of the restructuring of Virginia Regulations, the Commonwealth deleted financial assurance requirements equivalent to 10 CFR 40.36. The Commonwealth is proceeding with the necessary revisions to their regulations to ensure compatibility, and these revisions will be effective by January 1, 2009. Therefore, on the proposed effective date of the Agreement, the Commonwealth will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the Commonwealth will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The Commonwealth has adopted NRC compatible requirements for the handling and storage of radioactive material. The Commonwealth will not seek authority to regulate the land disposal of radioactive material as waste. The Commonwealth waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by Commonwealth licensees for transfer for disposal to an authorized waste disposal site or broker.

(d) Transportation of Radioactive Material. Virginia has adopted compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Virginia will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The Commonwealth has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. The Commonwealth has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The Commonwealth has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Commonwealth has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The Commonwealth has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Commonwealth is bound by requirements specified in Commonwealth law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Commonwealth law prescribes standards of ethical conduct for Commonwealth employees.

(i) Cooperation with Other Agencies. Commonwealth law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by the Commonwealth. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions required by 10 CFR 20.1403 prior to the effective date of the proposed Agreement, the Commonwealth deems the termination to be final despite any other provisions of Commonwealth law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by the Commonwealth under the plan so long as the licensee conforms to the approved plan.

The Commonwealth also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Code of Virginia provides exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of section 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Virginia in the application for an Agreement submitted by Governor Kaine on June 12, 2008, and the supporting information provided by the staff of the DRH of the Virginia Department of Health, and concludes that the Commonwealth of Virginia satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and therefore, meets the requirements of section 274 of the Act. The proposed Commonwealth of Virginia program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 1st day of December 2008.

For the Nuclear Regulatory Commission.

Robert J. Lewis,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Appendix A—An Agreement Between the United States Nuclear Regulatory Commission and The Commonwealth of Virginia for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended

Whereas, the United States Nuclear Regulatory Commission (the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the Commonwealth of Virginia is authorized under the Code of Virginia section 32.1–235, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia

(the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on [date] that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, the Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, this Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;

2. Byproduct materials as defined in Section 11e.(3) of the Act;

3. Byproduct materials as defined in Section 11e.(4) of the Act;

4. Source materials; and

5. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;

4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;

5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

6. The regulation of byproduct material as defined in section 11e.(2) of the Act;

7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons.

Article III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible.

The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of section 274 of the Act.

The Commission may also, pursuant to section 274J of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Richmond, Virginia] this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Dale E. Klein, Chairman.

For the Commonwealth of Virginia.

Timothy M. Kaine, Governor.

[FR Doc. E8–29074 Filed 12–10–08; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

December 8, 2008 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 73, Number 234, Page 73973) on December 4, 2008. No requests were received to provide testimony or submit written

statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, December 8, 2008 in conjunction with OPIC's December 11, 2008 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: December 8, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–29432 Filed 12–9–08; 11:15 am]

BILLING CODE 3195–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–15; Order No. 144]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document announces a recently-filed Postal Service notice of a new international mail contract. It addresses procedural steps associated with this filing.

DATES: Comments due December 12, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 2, 2008, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS agreements, and supported by the Governors' Decision filed in Docket No. CP2008–5.[2] *Id.* at 1–2. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are functionally equivalent to the initial GEPS 1 contract filed in Docket No. CP2008–5.[3] *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It submitted the contract and supporting material under seal, and attached a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2) to the Notice. *Id.* at 1–2.

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1, explains expiration terms, and discusses the Postal Service's interest in confidential treatment for the contract and related material.[4] *Id.* at 2–3. It also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the initial contract filed in Docket No. CP2008–5. The Postal Service requests that this contract be included within the GEPS 1 product. *Id.* at 3–5.

II. Notice of Filing

The Commission establishes Docket No. CP2009–15 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than December 12, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in the captioned filings.

It Is Ordered

1. The Commission establishes Docket No. CP2009–15 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 12, 2008.

4. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–29264 Filed 12–10–08; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, December 2, 2008 (Notice).

[2] *See* Docket No. CP2008–5, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors' Decision No. 08–7), May 6, 2008, and United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

[3] *See* PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

[4] Contract expiration is tied to one year after the Postal Service notifies the customer that all necessary approvals and reviews have been obtained. *Id.* at 2.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28527; File No. 812–13492]

RiverSource Life Insurance Company, et al., Notice of Application

December 4, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of amended and restated application for an order of exemption pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

Applicants: RiverSource Life Insurance Company (''RiverSource Life''), RiverSource Life Insurance Co. of New York (''RiverSource Life of NY'' and, together with RiverSource Life, the ''Companies''), RiverSource Variable Account10 (''Account 10''), RiverSource Variable Life Separate Account (''Variable Life Separate Account''), RiverSource of New York Variable Annuity Account (''Variable Annuity Account NY'') and RiverSource of New York Account 8 (''Account 8 NY'') (except for the Companies, each a ''separate account'' as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended (the ''1940 Act''); the separate accounts are collectively referred to herein as the ''Separate Accounts'') (all foregoing parties collectively referred to herein as the ''Applicants''); and RiverSource Variable Series Trust (''RiverSource VS Trust,'' and together with the Applicants, the ''Section 17(b) Applicants'').

Filing Date: The application was filed on February 11, 2008, and amended and restated on October 30, 2008.

Summary of Application: Applicants request an order of the Commission, pursuant to Section 26(c) of the 1940 Act, approving the substitution of shares

of certain investment portfolios (''Substituted Portfolios'') for shares of certain other investment portfolios (''Replacement Portfolios'') under certain variable life insurance policies and/or variable annuity contracts (''Contracts''), each issued through a Separate Account. The Section 17(b) Applicants seek an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act to the extent necessary to permit the Companies to carry out the Substitutions.

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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 2008, and should be accompanied by proof of service on Applicants, 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NW., Washington, DC 20549. Applicants, c/o Rodney Jay Vessels, Esq., RiverSource Life Insurance Company, 829 Ameriprise Financial Center, Minneapolis, Minnesota 55474, with copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. RiverSource Life is a stock life insurance company organized in 1957 under the laws of the state of Minnesota and is located at 70100 Ameriprise Financial Center, Minneapolis, MN 55474. It is a wholly-owned subsidiary of Ameriprise Financial, Inc.

2. RiverSource Life established Account 10 on August 23, 1995 pursuant to the provisions of Minnesota law. Account 10 meets the definition of ''separate account'' under the federal securities laws. Account 10 is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–07355). The assets of Account 10 support certain Contracts that offer Substituted Portfolios as investment options (the ''Account 10 Contracts''), and interests in Account 10 offered through such Contracts have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4.

3. RiverSource Life is the legal owner of the assets in Account 10. The assets of Account 10 are not chargeable with liabilities arising out of any other RiverSource Life business. Income, capital gains and/or capital losses, whether or not realized, from assets allocated to Account 10 are credited to or charged against the account without regard to the income, capital gains, and/or capital losses arising out of any other RiverSource Life business. Account 10 is segmented into subaccounts, and certain subaccounts invest in the Substituted Portfolios.

4. A majority of Account 10 Contracts involved in the Substitution are no longer offered for sale, except for RiverSource Retirement Advisor 4 Advantage Variable Annuity, RiverSource Retirement Advisor 4 Select Variable Annuity and RiverSource Retirement Advisor 4 Access Variable Annuity Contracts. The subaccounts investing in the Substituted Portfolios are currently available for the allocation of additional purchase payments and transfer of contract value under the Account 10 Contracts for existing and new Contract owners, and will continue to be available to such Contract owners until the time the Substitutions occur.

5. The terms and conditions, including charges and expenses, applicable to the Account 10 Contracts are described in the registration statements relating to such Contracts. Pursuant to the Account 10 Contracts, RiverSource Life reserves the right to substitute shares of one portfolio for shares of another. In the prospectuses for the Account 10 Contracts, RiverSource Life also reserves the right to substitute shares of one portfolio for shares of another.

6. The terms of the Account 10 Contracts and the prospectuses for the Account 10 Contracts also permit owners to transfer contract value among the subaccounts. Currently, subject to certain restrictions, owners may redistribute contract value among the accounts without charge at any time until annuity payouts begin, and once per contract year among the subaccounts after annuity payouts begin. RiverSource Life does not assess a transfer charge. RiverSource Life also has market timing policies and procedures that may operate to limit transfers. If the Account 10 Contract offers a fixed account and GPA account, RiverSource Life may impose restrictions on transfers to and from the fixed account and GPA account.

7. RiverSource Life established Variable Life Separate Account on October 16, 1985 pursuant to the provisions of Minnesota law. Variable Life Separate Account meets the definition of ''separate account'' under the federal securities laws. Variable Life Separate Account is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–4298). The assets of Variable Life Separate Account support certain Contracts that offer Substituted Portfolios as investment options (the ''Variable Life Separate Account Contracts''), and interests in Variable Life Separate Account offered through such Contracts have been registered under the 1933 Act on Form N–4.

8. RiverSource Life is the legal owner of the assets in Variable Life Separate Account. The assets of Variable Life Separate Account are not chargeable with liabilities arising out of any other RiverSource Life business. Income, capital gains and/or capital losses, whether or not realized, from assets allocated to Variable Life Separate Account are credited to or charged against the account without regard to the income, capital gains, and/or capital losses arising out of any other RiverSource Life business. Variable Life Separate Account is segmented into subaccounts, and certain subaccounts invest in the Substituted Portfolios.

9. The majority of the Variable Life Separate Account Contracts involved in the Substitution are no longer offered for sale, except RiverSource Single Premium Variable Life, RiverSource Variable Life Universal Life IV and RiverSource Variable Life Universal Life IV—Estate Series. The subaccounts investing in the Substituted Portfolios are currently available for the allocation of additional purchase payments and transfer of contract value under the Variable Life Separate Account Contracts for existing and new Contract owners, and will continue to be available to such Contract owners until the time the Substitutions occur.

10. The terms and conditions, including charges and expenses, applicable to the Variable Life Separate Account Contracts are described in the registration statements relating to such

Contracts. Pursuant to the Variable Life Separate Account Contracts, RiverSource Life reserves the right to substitute shares of one portfolio for shares of another. In the prospectuses for the Variable Life Separate Account Contracts, RiverSource Life also reserves the right to substitute shares of one portfolio for shares of another.

11. The terms of the Variable Life Separate Account Contracts and the prospectuses for the Variable Life Separate Account Contracts also permit owners to transfer contract value among the subaccounts. Currently, subject to certain restrictions, owners may redistribute contract value among the accounts without charge. RiverSource Life does not assess a transfer charge. RiverSource Life also has market timing policies and procedures that may operate to limit transfers. If the Variable Life Separate Account Contract offers a fixed account, RiverSource Life may impose restrictions on transfers to and from the fixed account.

12. RiverSource Life of NY is a stock life insurance company organized in 1972 under the laws of the state of New York and is located at 20 Madison Avenue Extension, Albany, New York 12203. It is a wholly-owned subsidiary of RiverSource Life. RiverSource Life of NY conducts a conventional life insurance business. Its primary products currently include fixed and variable annuity contracts and life insurance policies. These products are distributed through individual insurance agents, financial planners, and broker-dealers to both the tax qualified and non-tax-qualified markets. As of December 31, 2007, RiverSource Life of NY's assets were in excess of $ 5.32 billion. For purposes of the 1940 Act, RiverSource Life of NY is the depositor and sponsor of the Variable Annuity Account NY and Account 8 NY as those terms have been interpreted by the Commission with respect to variable annuity and variable life insurance separate accounts.

13. RiverSource Life of NY established Variable Annuity Account NY on April 17, 1996 pursuant to the provisions of New York law. Variable Annuity Account NY meets the definition of ''separate account'' under the federal securities laws. Variable Annuity Account NY is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–07623). The assets of Variable Annuity Account NY support certain Contracts that offer Substituted Portfolios as investment options (the ''Variable Annuity Account NY Contracts''), and interests in Variable Annuity Account NY offered through such Contracts have been registered under the 1933 Act on Form N–4.

14. RiverSource Life of NY is the legal owner of the assets in Variable Annuity Account NY. The assets of Variable Annuity Account NY are not chargeable with liabilities arising out of any other RiverSource Life of NY business. Income, capital gains and/or capital losses, whether or not realized, from assets allocated to Variable Annuity Account NY are credited to or charged against the account without regard to the income, capital gains, and/or capital losses arising out of any other RiverSource Life of NY business. Variable Annuity Account NY is segmented into subaccounts, and certain subaccounts invest in the Substituted Portfolios.

15. The majority of the Variable Annuity Account NY Contracts involved in the Substitution are no longer offered for sale, except RiverSource Retirement Advisor 4 Advantage Variable Annuity, RiverSource Retirement Advisor 4 Select Variable Annuity and RiverSource Retirement Advisor 4 Access Variable Annuity Contracts. The subaccounts investing in the Substituted Portfolios are currently available for the allocation of additional purchase payments and transfer of contract value under the Variable Annuity Account NY Contracts for existing and new Contract owners, and will continue to be available to such Contract owners until the time the Substitutions occur.

16. The terms and conditions, including charges and expenses, applicable to the Variable Annuity Account NY Contracts are described in the registration statements relating to such Contracts. Pursuant to the Variable Annuity Account NY Contracts, RiverSource Life of NY reserves the right to substitute shares of one portfolio for shares of another. In the prospectuses for the Variable Annuity Account NY Contracts, RiverSource Life of NY also reserves the right to substitute shares of one portfolio for shares of another.

17. The terms of the Variable Annuity Account NY Contracts and the prospectuses for the Variable Annuity Account NY Contracts also permit owners to transfer contract value among the subaccounts. Currently, subject to certain restrictions, owners may redistribute contract value among the accounts without charge at any time until annuity payouts begin, and once per contract year among the subaccounts after annuity payouts begin. RiverSource Life of NY does not assess a transfer charge. RiverSource Life of NY also has market timing policies and procedures that may operate to limit transfers. If the Variable Annuity Account NY Contract offers a fixed account, RiverSource Life of NY may impose restrictions on transfers to and from the fixed account.

18. RiverSource Life of NY established Account 8 NY on September 12, 1985 pursuant to the provisions of New York law. Account 8 NY meets the definition of ''separate account'' under the federal securities laws. Account 8 NY is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–5213). The assets of Account 8 NY support certain Contracts that offer Substituted Portfolios as investment options (the ''Account 8 NY Contracts''), and interests in Account 8 NY offered through such Contracts have been registered under the 1933 Act on Form N–4.

19. RiverSource Life of NY is the legal owner of the assets in Account 8 NY. The assets of Account 8 NY are not chargeable with liabilities arising out of any other RiverSource Life of NY business. Income, capital gains and/or capital losses, whether or not realized, from assets allocated to Account 8 NY are credited to or charged against the account without regard to the income, capital gains, and/or capital losses arising out of any other RiverSource Life of NY business. Account 8 NY is segmented into subaccounts, and certain subaccounts invest in the Substituted Portfolios.

20. The majority of the Account 8 NY Contracts involved in the Substitution are no longer offered for sale, except RiverSource Succession Select Variable Life Insurance and RiverSource Variable Life Universal Life IV and RiverSource Variable Life Universal Life IV—Estate Series Contracts. The subaccounts investing in the Substituted Portfolios are currently available for the allocation of additional purchase payments and transfer of contract value under the Account 8 NY Contracts for existing and new Contract owners, and will continue to be available to such Contract owners until the time the Substitutions occur.

21. The terms and conditions, including charges and expenses, applicable to the Account 8 NY Contracts are described in the registration statements relating to such Contracts. Pursuant to the Account 8 NY Contracts, RiverSource Life of NY reserves the right to substitute shares of one portfolio for shares of another. In the prospectuses for the Account 8 NY Contracts, RiverSource Life of NY also reserves the right to substitute shares of one portfolio for shares of another.

22. The terms of the Account 8 NY Contracts and the prospectuses for the

Account 8 NY Contracts also permit owners to transfer contract value among the subaccounts. Currently, subject to certain restrictions, owners may redistribute contract value among the accounts without charge at any time until annuity payouts begin, and once per contract year among the subaccounts after annuity payouts begin. RiverSource Life of NY does not assess a transfer charge. RiverSource Life of NY also has market timing policies and procedures that may operate to limit transfers. If the Account 8 NY Contract offers a fixed account, RiverSource Life of NY may impose restrictions on transfers to and from the fixed account.

23. The proposed substitutions are as follows: (i) Class I shares of the American Century VP Value Fund of the American Century Variable Portfolios for shares of RiverSource VP—Diversified Equity Income Fund of the RiverSource Variable Series Trust; (ii) Class II Shares of the Pioneer Equity Income VCT Portfolio of the Pioneer Variable Contracts Trust for shares of RiverSource VP—Diversified Equity Income Fund of the RiverSource Variable Series Trust; (iii) Class IB Shares of the Putnam VT International New Opportunities Fund of the Putnam Variable Trust for Series II Shares of the AIM V.I. International Growth Fund of the AIM Variable Insurance Funds; (iv) Service Shares of the Dreyfus VIF International Value Portfolio of the Dreyfus Variable Investment Fund for Class B shares of the AllianceBernstein VPS International Value Portfolio of the AllianceBernstein Variable Products Series Fund; (v) Service Shares of the Lazard Retirement International Equity Portfolio of the Lazard Retirement Series for Class B shares of the AllianceBernstein VPS International Value Portfolio of the AllianceBernstein Variable Products Series Fund; (vi) Service Class shares of the MFS® Total Return Series of the MFS® Variable Insurance Trust for shares of RiverSource VP—Balanced Fund of the RiverSource Variable Series Trust; (vii) Class 1 shares of the FTVIPT Templeton Developing Markets Securities Fund of the Franklin Templeton Variable Insurance Products Trust for shares of Threadneedle VP—Emerging Markets Fund of the RiverSource Variable Series Trust; and (viii) Class 2 shares of the FTVIPT Templeton Foreign Securities Fund of the Franklin Templeton Variable Insurance Products Trust for Class 2 shares of the Evergreen VA International Equity Fund of the Evergreen Variable Annuity Trust.

24. The Applicants represent that each of the Replacement Portfolios has substantially similar investment objectives, principal investment strategies, and risk characteristics to those of its corresponding Substituted Portfolio as stated in their respective prospectuses and/or Statements of Additional Information (''SAI'') and as set out in the application.

25. The Applicants represent that each of the Replacement Portfolios' total net operating expenses and aggregate investment management fees and 12b–1 fees, for the year ended December 31, 2007, expressed as an annual percentage of average daily net assets, are no higher than those of its corresponding Substituted Portfolio (except for the Threadneedle VP—Emerging Markets Fund, which has slightly higher total net operating expenses than the FTVIPT Templeton Developing Markets Securities Fund, Class 1), as set forth in the following chart:

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EXPENSE RATIOS
(as a percentage of average daily net assets)

Substituted Portfolios (One year Period Ended 12/31/07)		Replacement Portfolios (One Year Period Ended 12/31/07)	
American Century VP Value Fund, Class I		**RiverSource VP – Diversified Equity Income Fund***	
Investment Management Fees	0.93%	Investment Management Fees	0.59%
12b-1 Fees**	None	12b-1 Fees**	0.13%
Other Expenses	0.01%	Other Expenses	0.14%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	0.94%	Total Operating Expenses	0.86%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	0.94%	Total Net Operating Expenses	0.86%
Pioneer Equity Income VCT Portfolio, Class II Shares		**RiverSource VP – Diversified Equity Income Fund***	
Investment Management Fees	0.65%	Investment Management Fees	0.59%
12b-1 Fees**	0.25%	12b-1 Fees**	0.13%
Other Expenses	0.05%	Other Expenses	0.14%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	0.95%	Total Operating Expenses	0.86%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	0.95%	Total Net Operating Expenses	0.86%
Putnam VT International New Opportunities Fund, Class IB Shares(1)		**AIM V.I. International Growth Fund, Series II Shares(2)**	
Investment Management Fees	1.00%	Investment Management Fees	0.71%
12b-1 Fees**	0.25%	12b-1 Fees**	0.25%
Other Expenses	0.17%	Other Expenses	0.36%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.01%
Total Operating Expenses	1.42%	Total Operating Expenses	1.33%
Less Expense Waivers and Reimbursements	0.06%	Less Expense Waivers and Reimbursements	0.01%
Total Net Operating Expenses	1.36%	Total Net Operating Expenses	1.32%
Dreyfus VIF International Value Portfolio, Service Shares		**AllianceBernstein VPS International Value Portfolio, Class B**	
Investment Management Fees	1.00%	Investment Management Fees	0.73%
12b-1 Fees**	0.25%	12b-1 Fees**	0.25%
Other Expenses	0.19%	Other Expenses	0.06%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	1.44%	Total Operating Expenses	1.04%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	1.44%	Total Net Operating Expenses	1.04%

EXPENSE RATIOS
(as a percentage of average daily net assets)

Substituted Portfolios (One year Period Ended 12/31/07)		Replacement Portfolios (One Year Period Ended 12/31/07)	
Lazard Retirement International Equity Portfolio, Service Shares		**AllianceBernstein VPS International Value Portfolio, Class B**	
Investment Management Fees	0.75%	Investment Management Fees	0.75%
12b-1 Fees**	0.25%	12b-1 Fees**	0.25%
Other Expenses	0.18%	Other Expenses	0.06%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	1.18%	Total Operating Expenses	1.06%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	1.18%	Total Net Operating Expenses	1.06%
MFS Total Return Series, Service Class(3)		**RiverSource VP – Balanced Fund***	
Investment Management Fees	0.75%	Investment Management Fees	0.52%
12b-1 Fees**	0.25%	12b-1 Fees**	0.13%
Other Expenses	0.08%	Other Expenses	0.14%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	1.08%	Total Operating Expenses	0.79%
Less Expense Waivers and Reimbursements	0.03%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	1.05%	Total Net Operating Expenses	0.79%
American Century VP Value Fund, Class I		**RiverSource VP – Diversified Equity Income Fund***	
Investment Management Fees	0.93%	Investment Management Fees	0.59%
12b-1 Fees**	None	12b-1 Fees**	0.13%
Other Expenses	0.01%	Other Expenses	0.14%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	0.94%	Total Operating Expenses	0.86%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	0.94%	Total Net Operating Expenses	0.86%
FT VIPT Templeton Developing Markets Securities Fund, Class 1		**Threadneedle VP – Emerging Markets Fund***	
Investment Management Fees	1.23%	Investment Management Fees	1.10%
12b-1 Fees**	None	12b-1 Fees*	0.13%
Other Expenses	0.25%	Other Expenses	0.26%
Acquired Fund Fees and Expenses	0.00%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	1.48%	Total Operating Expenses	1.49%
Less Expense Waivers and Reimbursements	0.00%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	1.48%	Total Net Operating Expenses	1.49%

EXPENSE RATIOS
(as a percentage of average daily net assets)

Substituted Portfolios (One year Period Ended 12/31/07)		Replacement Portfolios (One Year Period Ended 12/31/07)	
FT VIPT Templeton Foreign Securities Fund, Class 2[4]		**Evergreen VA International Equity Fund , Class 2**	
Investment Management Fees	0.63%	Investment Management Fees	0.37%
12b-1 Fees**	0.25%	12b-1 Fees**	0.25%
Other Expenses	0.14%	Other Expenses	0.24%
Acquired Fund Fees and Expenses	0.02%	Acquired Fund Fees and Expenses	0.00%
Total Operating Expenses	1.04%	Total Operating Expenses	0.86%
Less Expense Waivers and Reimbursements	0.02%	Less Expense Waivers and Reimbursements	0.00%
Total Net Operating Expenses	1.02%	Total Net Operating Expenses	0.86%

* Management fees include the impact of a performance incentive adjustment fee that increased the management fee by 0.01% for RiverSource Variable Portfolio – Balanced Fund, 0.03% for RiverSource Variable Portfolio – Diversified Equity Income Fund and 0.03% for Threadneedle Variable Portfolio – Emerging Markets Portfolio.

** 12b-1 Fees listed for the Replacement Funds in the above table are the maximum fees authorized by the Plan.

[1] Putnam Management has a contractual agreement to limit expenses through Dec. 31, 2008. After fee waivers and expense reimbursements net expenses would be 1.36% for Putnam VT International New Opportunities Fund – Class IB Shares.

[2] The Fund's advisor has contractually agreed to waive advisory fees and/or reimburse expenses of Series II shares to the extent necessary to limit total annual expenses (subject to certain exclusions) of Series II shares to 1.45% of average daily net assets. In addition, effective July 1, 2007, AIM contractually agreed to waive 100% of the advisory fee AIM receives from affiliated money market funds on investments by the Fund in such affiliated money market funds. These waiver agreements are in effect through at least April 30, 2009. After fee waivers and expense reimbursements net expenses would be 1.32% for AIM V.I. International Growth Fund, Series II Shares.

[3] MFS has agreed in writing to reduce its management fee to 0.65% for MFS Total Return Series annually on average daily net assets in excess of $3 billion. After fee reductions net expenses would be 1.05% for MFS Total Return Series – Service Class. This written agreement will remain in effect until modified by the Fund's Board of Trustees.

[4] The manager has agreed in advance to reduce its fee from assets invested by the Fund in a Franklin Templeton money market fund (the acquired fund) to the extent that the Fund's fees and expenses are due to those of the acquired fund. This reduction is required by the Trust's board of trustees and an exemptive order by the Securities and Exchange Commission; this arrangement will continue as long as the exemptive order is relied upon. After fee reductions net expenses would be 1.02% for FTVIPT Templeton Foreign Securities Fund – Class 2.

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26. Applicants represent that the Substitutions proposed herein are part of an overall business goal of the Companies to make the Contracts more attractive to Contract owners by providing a diverse array of investment options that are neither redundant nor duplicative in terms of the investment types and styles of the mutual funds underlying such options. The Companies believe that a more concentrated and streamlined array of investment options could result in increased operational and administrative efficiencies and economies of scale for the Companies. The Companies also believe that Contracts that offer too many similar investment options may be unnecessarily confusing to Contract owners and may increase the Companies' costs of administering the Contracts.

27. Applicants represent that the Companies chose the Replacement Portfolios with the goal of ensuring that Contract owners would be provided with similar investment options under their Contracts following the Substitutions, based on an analysis of investment objectives, strategies, risks, performance, fees and expenses.

28. Applicants represent that for all but one Substitution, the expense ratio of the Replacement Portfolio is lower than that of the corresponding Substituted Portfolio. Applicants also represent that for a vast majority of the

Substitutions, the Replacement Portfolio is larger than or of a comparable size to the corresponding Substituted Portfolio. Applicants note that a high level of assets means various fund costs (such as legal, accounting, printing and trustee fees) are spread over a larger base, with each Contract owner potentially bearing a smaller portion of the cost than would be the case if the Replacement Portfolio were smaller in size. Applicants also note that for many of the Replacement Portfolios, assets will increase as a result of the Substitutions, in some cases significantly, and thus it is anticipated that with such an increase, operating expenses will decrease.

29. Ultimately, given all of the factors discussed above, the Companies concluded that the Substituted Portfolios offered under the Contracts warranted replacement. Accordingly, the Applicants seek the Commission's approval under Section 26(c) to engage in the substitution transactions described below.

30. The Companies will effect the Substitutions following the issuance of the requested order as follows. As of the effective date of the Substitutions (''Effective Date''), each Separate Account will either redeem shares of the applicable Substituted Portfolios in-kind or the Substituted Portfolios will liquidate portfolio securities as necessary and shares of the Replacement portfolio will be purchased with cash. In either event, the proceeds of such redemptions will then be used to purchase shares of the corresponding class of the Replacement Portfolio, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Substituted Portfolios in the applicable class of the Replacement Portfolio.

31. Redemption requests and purchase orders will be placed simultaneously so that contract values will remain fully invested at all times. All redemptions of shares of the Substituted Portfolios and purchases of shares of the Replacement Portfolio will be effected in accordance with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.

32. The Substitutions will take place at relative net asset value as of the Effective Date with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Contract owners will not incur any additional fees or charges as a result of the Substitutions, nor will their rights or the Companies' obligations under the Contracts be altered in any way, and the Substitutions will not change Contract owners' insurance benefits under the Contracts. All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by RiverSource Life or RiverSource Life of NY. In addition, the Substitutions will not impose any tax liability on Contract owners. The Substitutions will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. Neither RiverSource Life nor RiverSource Life of NY will exercise any right it may have under the Contracts to impose restrictions on transfers under the Contracts for a period of at least thirty (30) days following the Substitutions. The only exception to this would be restrictions that RiverSource Life or RiverSource Life of NY may impose to prevent or restrict ''market timing'' activities by Contract owners or their agents.

33. The Companies represent that, with respect to Contracts outstanding on the Effective Date, the Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter), during the twenty-four months following the Effective Date, the subaccounts investing in each applicable Replacement Portfolio to the extent that the sum of the Replacement Portfolio's net operating expenses (taking into account any expense waiver or reimbursement) and the Separate Account expenses for such period exceed, on an annualized basis, the sum of the corresponding Substituted Portfolio's net operating expenses (taking into account any expense waiver or reimbursement) and the Separate Account expenses for the fiscal year ended December 31, 2007. In addition, for twenty-four months following the Effective Date, the Companies will not increase asset-based fees or charges for Contracts outstanding on the Effective Date.

34. Applicants represent that the procedures to be implemented are sufficient to assure that each Contract owner's cash values immediately after the Substitutions shall be equal to the cash value immediately before the Substitutions.

35. Applicants represent that under the Manager of Managers Order applicable to the RiverSource Funds, a vote of the shareholders is not necessary to change a subadviser of the applicable Replacement Portfolio, except for changes involving an affiliated subadviser. Notwithstanding, after the Effective Date of the Substitutions, the Applicants agree not to change the Replacement Portfolio's subadviser, add a new subadviser, or otherwise rely on the Manager of Managers Order without first obtaining shareholder approval of either the subadviser change or the Replacement Portfolio's continued ability to rely on the Manager of Managers Order.

36. Applicants note that Contract owners were notified of the initial application by means of a prospectus supplement for each of the Contracts stating that the Applicants filed the initial application and seek approval for the Substitutions (''Pre-Substitution Notice''). The Pre-Substitution Notice set forth the anticipated Effective Date and advised Contract owners that contract values attributable to investments in the Substituted Portfolios will be transferred to the Replacement Portfolio, without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge, on the Effective Date. The Pre-Substitution Notice stated that, from the date the initial application was filed with the Commission through the date thirty (30) days after the Substitutions, Contract owners may make one transfer of contract value from the subaccounts investing in the Substituted Portfolios (before the Substitutions) or the Replacement Portfolio (after the Substitutions) to one or more other subaccount(s) without charge (including sales charges or surrender charges) and without that transfer counting against their contractual transfer limitations.

37. Applicants represent that all Contract owners will have received a copy of the most recent Replacement Portfolio prospectus prior to the Substitutions.

38. Applicants represent that within five (5) days following the Substitutions, Contract owners affected by the Substitutions will be notified in writing that the Substitutions were carried out. This notice will restate the information set forth in the Pre-Substitution Notice.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act (formerly, Section 26(b)) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of

investors and the purposes of the 1940 Act.

2. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial premium, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. For the reasons described below, the Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision. In addition, the Applicants submit that the proposed Substitutions meet the standards that the Commission and its Staff have applied to substitutions that have been approved in the past.

3. The replacement of the Substituted Portfolios with the Replacement Portfolio is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act.

4. Although not always identical, the investment objectives and principal investment strategies of the Replacement Portfolio are substantially similar to those of the corresponding Substituted Portfolio.

5. The total operating expenses, prior to expense waivers and reimbursements, of the applicable class of the Replacement Portfolios were lower than those of the corresponding Substituted Portfolio as a December 31, 2007, except for the Threadneedle VP—Emerging Markets Fund, which has slightly higher total net operating expenses than the FTVIPT Templeton Developing Markets Securities Fund, Class 1. For a two-year period following the date of the Substitutions the Companies will ensure that total net operating expenses of the applicable class of all Replacement Portfolios, together with Separate Account expenses, will not exceed, on an annualized basis, the total net operating expenses of the corresponding Substituted Portfolio, together with Separate Account expenses, as of December 31, 2007.

6. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitutions. The Applicants submit that, for all the reasons stated above, the Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy of the Contracts and provisions of the 1940 Act.

7. The Section 17(b) Applicants also request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit RiverSource Life or RiverSource Life of NY to carry out the Substitutions by redeeming shares issued by the Substituted Portfolios in-kind and using the distributed securities to purchase shares issued by the applicable Replacement Portfolios.

8. Section 17(a)(l) and (a)(2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. As described below, RiverSource Life and RiverSource Life of NY anticipate that the Substitutions will be done (in whole or in part) by redeeming shares of the Substituted Portfolios in-kind rather than in cash and then using those assets to purchase shares of the Replacement Portfolio. Redemptions and purchases in-kind involve the purchase of property from a registered investment company and the sale of property to a registered investment company by RiverSource Life, RiverSource Life of NY, and RiverSource Funds, each arguably an affiliated person of those investment companies.

9. Pursuant to Section 17(a)(1) of the 1940 Act, the Section 17(b) Applicants may be considered affiliates of one or more of the Replacement Portfolios involved in such Substitutions, based upon the definition of ''affiliated person'' under Section 2(a)(3) of the 1940 Act. In addition to the Companies' affiliation with each Replacement Portfolio of the RiverSource Funds, the Companies, through their Separate Accounts, in the aggregate own 5% or more of the outstanding shares of the following Replacement Portfolios: AllianceBernstein VPS International Value Portfolio and Evergreen VA International Equity Fund. Therefore, arguably each Company is an affiliated person of these Replacement Portfolios. Because the Substitutions involving these Replacement Portfolios and the Replacement Portfolios of the RiverSource Funds may be effected, in whole or in part, by means of in-kind redemptions and subsequent purchases of shares, and also by means of in-kind transactions, these Substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliates.

10. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

11. Rule 17a–7 under the 1940 Act exempts from Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

12. The Section 17(b) Applicants submit that the terms of the Substitutions, including the consideration to be paid and received, as described in the Application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17(b) Applicants also submit that the Substitutions are consistent with the policies of the applicable fund companies and their portfolios, as recited in the current registration statements and reports filed by them under the 1940 Act. Finally, the Section 17(b) Applicants submit that the proposed Substitutions are consistent with the general purposes of the 1940 Act.

13. RiverSource Life and RiverSource Life of NY assert that the terms under which the in-kind redemptions and purchases will be effected are reasonable and fair and do not involve overreaching on the part of any person principally because the applicable Substitutions will comply in substance with all but one of the principal conditions enumerated in Rule 17a-7. The use of in-kind transactions will not cause Contract owner interests to be diluted. The proposed transactions will take place at relative net asset value as of the Effective Date in conformity with the requirements of Section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Contract owners will not suffer any adverse tax consequences as a result of the Substitutions. Fees and charges under the Contracts will not increase because of the Substitutions.

14. Even though the Section 17(b) Applicants may not rely on Rule 17a–7 because they cannot meet all of its conditions, the Section 17(b) Applicants submit that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. The Section 17(b) Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the procedures adopted thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed Substitutions will be such as to offer the same degree of protection to the Replacement Portfolio from overreaching that Rule 17a–7 provides to it generally in connection with its purchase and sale of securities under that Rule in the ordinary course of its business.

15. In particular, the proposed Substitutions will not be effected at a price that is disadvantageous to the Substituted Portfolios or the Replacement Portfolios. Although the Substitutions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Portfolio involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c–1 under the 1940 Act. Moreover, consistent with Rule 17a–7(d), no brokerage commissions, fees, or other remuneration will be paid in connection with the in-kind transactions. All in-kind redemptions from a Substituted Portfolio of which any of the Substitution Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc. (available December 28, 1999)*.

16. Consistent with Section 17(b) and Rule 17a–7(c), any in-kind redemptions and purchases for purposes of the Substitutions will be transacted in a manner consistent with the investment objectives and policies of the applicable Substituted Portfolios and the Replacement Portfolios, as recited in their registration statements. The adviser or any subadviser to each Replacement Portfolio will review the securities holdings of the Substituted Portfolios to determine whether their portfolio holdings would be suitable investments for the corresponding Replacement Portfolio in the overall context of that Portfolio's investment objectives and policies and consistent with the management of that Portfolio. The adviser or any subadviser to each Replacement Portfolio will conduct its review of the Substituted Portfolios' securities holdings in the same manner that a board of directors would normally follow in accordance with Rule 17a–7. The adviser or any subadviser to each Replacement Portfolio will only accept those securities as consideration for its shares that it would have acquired in a cash transaction. The Section 17(b) Applicants state that securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolios to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming and purchasing Portfolios. The redeeming and purchasing values will be the same. If the adviser or any subadviser to any Replacement Portfolio declines to accept particular portfolio securities of the corresponding Substituted Portfolio for purchase in-kind of shares of that corresponding Portfolio, the applicable Substituted Portfolio will liquidate portfolio securities as necessary and shares of the corresponding Replacement Portfolio will be purchased with cash.

17. Applicants represent that the Substitutions, as described herein, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds and subsequently contributed to the Replacement Portfolio to effect the contemplated in-kind purchases of shares will be valued based on the normal valuation procedures of the redeeming Substituted Portfolios and purchasing Replacement Portfolio. Therefore, there will be no change in value to any Contract owner as a result of the Substitutions. The Commission has granted relief to others based on similar facts.

18. The Section 17(b) Applicants request an order of the Commission pursuant to Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit the Companies to carry out certain of the Substitutions by redeeming shares issued by each applicable Substituted Portfolio in-kind and using the securities distributed as redemption proceeds to purchase shares issued by the applicable Replacement Portfolios. The Section 17(b) Applicants submit that, for all of the reasons stated above, the terms of the proposed in-kind redemptions and purchases, including the consideration to be paid or received, are reasonable and fair to Contract owners and do not involve overreaching on the part of any person; and furthermore, granting the relief required herein for the proposed Substitutions that may be effected by means of in-kind redemptions and purchases of shares is appropriate, in the public interest, and consistent with the policies of each Portfolio and the general purposes of the 1940 Act.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in the application will not be completed unless all of the following conditions, and all other conditions and representations set forth in the Application, are met:

1. The Commission shall have issued an order (i) approving the Substitutions under Section 26(c) of the 1940 Act as necessary to carry out the transactions described in the application; and (ii) exempting any in-kind redemptions and purchases from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in the application.

2. Each Contract owner will have been sent (i) prior to the Effective Date, a copy of the effective prospectus for the Replacement Portfolio, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions

and the rights of the Contract owners in connection with the Substitutions, and (iii) within five (5) days after the Substitutions occur, a notice informing Contract owners affected by the Substitutions that the Substitutions were carried out and restating the information set forth in the Pre-Substitution Notice.

3. The Companies shall have satisfied themselves that (i) the Contracts allow the substitution of the Portfolios in the manner contemplated by the Substitutions and related transactions described herein, (ii) the transactions can be consummated as described in the application under applicable insurance laws, and (iii) any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–29312 Filed 12–10–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59052; File No. SR–CBOE–2008–119]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating to Appointment Costs

December 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2008, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE rules relating to appointment costs in connection with CBOE's decision to trade OEX on the Hybrid Trading System. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3 relating to the appointment costs for the OEX and XEO option classes, in connection with CBOE's decision to trade OEX on the Hybrid Trading System, and not on the Hybrid 3.0 Platform. Specifically, CBOE proposes to lower the appointment cost of OEX from .75 to .40, and lower the appointment cost of XEO from .25 to .10. The changes to the appointment costs would be effective December 9, 2008, which coincides with the date CBOE intends to trade OEX on the Hybrid Trading System. OEX would be placed in the AA Tier, which tier holds all option classes which have a fixed appointment cost. The tables in paragraphs (c)(i) and (c)(iii) of Rule 8.3 would be amended to reflect these proposed changes.

CBOE believes that amending the appointment costs of OEX and XEO as proposed promotes competition and efficiency, as members then could utilize the excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, in that lowering the appointment cost of OEX and XEO promotes competition and efficiency, as members then could utilize the excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

CBOE has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request and believes that such waiver is consistent with the protection of investors and the public interest. Allowing CBOE to lower the appointment cost of OEX and XEO does not raise any novel or significant regulatory issues and should promote competition and efficiency by allowing

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). The Commission notes that CBOE has satisfied the five-day pre-filing notice requirement.

members to use their excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes. Therefore, the Commission designates the proposed rule change as operative upon filing.[8]

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–CBOE–2008–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–119. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–119 and should be submitted on or before January 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

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[8] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59046; File No. SR–OCC–2007–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Late Exercises

December 3, 2008.

I. Introduction

On December 7, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend OCC's rules relating to the submission of late items and the fees associated with filing exercise notices after the start of critical processing. The proposed rule change was published for comment in the **Federal Register** on April 7, 2008.[3] No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The rule filing will amend OCC's (1) Rule 801 to modify the fee applied to exercise notices that are accepted by OCC after the start of critical processing, (2) Rule 805 to make conforming changes to the filing fees applied to the submission of supplementary exercise notices tendered after critical processing, and (3) Rule 205 to clarify the unusual or unforeseen circumstances when OCC may extend the cut-off time for submitting instructions to OCC.

Rule 801 addresses the exercise of options other than at expiration. Subject to specified exceptions and conditions, Rule 801(d) grants certain individuals[4] the discretion to permit a clearing member to file, revoke, or modify any exercise notice after the prescribed deadline for the purpose of correcting a bona fide error. However, the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. Prior to this rule change, these fees were:

(i) A fee of $5,000 for any request accepted between the prescribed deadline and the start of critical processing (provided that the request did not materially affect such start time)[5] and

(ii) a filing fee of $20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, with 50% of the fee to be distributed to the assigned clearing member or on a pro rata basis if more than one clearing member is assigned.[6]

Clearing members with short positions that had been assigned a late exercise were to receive notification thereof by 8 a.m. CT.

Under this rule change, OCC will eliminate the $5,000 filing fee for late exercise requests filed prior to the start of critical processing but will raise the filing fee for late exercise requests submitted after the start of critical processing from $20,000 to $75,000 per line item. For consistency, OCC also will modify the fees applicable to the submission of supplementary exercise notices at expiration as set forth in Rule 805.[7] Accordingly, OCC will amend Rule 805's filing fees to conform them to the changes being made in Rule 801.

By increasing the cost of filing late exercise requests after the start of critical processing, OCC intends to provide an incentive for firms to improve back office processing as well as to provide greater compensation to clearing members receiving ''late assignments'' while at the same time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844.

[4] Those individuals are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

[5] The current deadline for submitting exercise notices is 7 p.m. CT.

[6] OCC will accept exercises until as late as 6:30 a.m. However, OCC will not accept a request to revoke or modify an exercise after the start of critical processing.

[7] It has been at least five years since a supplementary exercise notice has been submitted for processing.

preserving the ability of firms to correct bona fide errors.

As explained in the Commission's notice of OCC's proposed rule change,[8] the primary reason for this rule change is that there were only a few late exercise requests that OCC received during the period January 2006 through March 2007.[9] Specifically, there were five requests for late exercises from five different firms relating to 14 line items with values ranging from $124,000 to $270,000. All requests were received after the start of critical processing, requiring OCC to run supplemental exercise procedures after nightly processing had been completed. Such processing was initiated following the 6:30 a.m. (CT) cut-off time for late exercise requests,[10] and all assigned firms were notified before the 8 a.m. (CT) deadline. Although no late exercise requests were received between the deadline for submitting exercises and the start of critical processing during the above-referenced review period, OCC determined that, upon request, its operations staff would extend the deadline by a reasonable period in the event an exchange, clearing member, or OCC experienced system or operational problems that prevented one or more clearing members from submitting exercises on a timely basis.[11] The payment of the applicable filing fee in such instances was neither required nor has it typically been required for requests received before the start of critical processing.

III. Discussion

Section 17A(b)(3)(F) of the Act[12] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that OCC's proposed rule change is consistent with this requirement because the new fee structure should provide an incentive for clearing members to improve their back office processing with respect to determining positions for which an exercise notice is to be submitted in order to reduce the frequency that they file late exercise requests while preserving their ability to correct bona fide operational errors.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2007–16), as amended, be and hereby is approved. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.[14]

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–29250 Filed 12–10–08; 8:45 am]

BILLING CODE 8011–01–P

[8] *Supra* note 3.

[9] From April 2007 to October 2007 there were no requests to submit a late exercise although in each of June and September 2007, OCC received an inquiry regarding a possible submission. However, the clearing members involved elected not to formally file such a request.

[10] Systemic and operational constraints preclude OCC from processing late exercise requests at an earlier time.

[11] Subject to OCC's need to start critical processing, the deadline for submitting exercise notices may be extended if ''unforeseen conditions'' prevent their submission by a clearing member (OCC Rule 205). OCC has concluded that its authority to extend such deadlines should more explicitly reference systemic or operational problems or other unforeseen conditions experienced by additional industry participants that may impact the timely submission of exercise notices.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before February 9, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Michele Gierwatoski, Lead Accountant, Office of Denver Finance, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Michele Gierwatoski, Lead Accountant, Office of Denver Finance, 303–844–0413, *michele.gierwatoski@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The SBA Form 172 is used by Lenders to report loan payments data to SBA on monthly basis. The purpose of this reporting is to (1) show the remittance due SBA on a loan serviced by participating lending institutions; (2) update the loan receivable balances; and (3) generate the issuance of past due notices.

Title: ''Transaction Report on Loans Serviced by Lenders''.

Description of Respondents: Small Business Administration Participating Lenders.

Form Number: 172.

Annual Responses: 11,134.

Annual Burden: 3,352.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Barbara Brannan, Special Assistant, Office of Surety Bond Guarantee Program, Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Special Assistant, Office of Surety Bond Guarantee Program, 202–205–6545, *barbara.brannan@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA's Surety Bond Guarantee (SBG) Program was created to encourage surety companies to provide bonding for small contractors. The purpose of this survey is to ascertain small business familiarity with the program and establish baseline level data on the relative size of the small business market in need of the program.

Title: ''Small Business Administration (SBA) Surety Bond Guarantee Customer Survey''.

Description of Respondents: Surety Companies.

Form Number: 2309.

Annual Responses: 382.

Annual Burden: 13.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman Karton, Program

Analyst, Office of Entrepreneurial Development, Small Business Administration, 409 Street, SW., 6th floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program Analyst, Office of Entrepreneurial Development, 202–619–186, *rachel.newman-karton@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Each form is used to notify recipients of grant awards and cooperative agreement awards. Form 1222 is used also to document logistical and budgetary information gathered from the awardees application and proposed. Awardees/Respondents are universities, colleges, state and local government, for-profit organizations. Form 1224 is used to certify the cost sharing by the recipient.

Title: ''Notice of Award and Grant Cooperative Agreement Sharing Proposal''.

Description of Respondents: Participating Colleges and Grants Management Offices.

Form Numbers: 1222 and 1224.

Annual Responses: 2,592.

Annual Burden: 202,261.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–29028 Filed 12–10–08; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that the Small Business Administration will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over $22,800,000	300 percent of Leverageable Capital.
(2) Over $22,800,000 but not over $45,700,000	$68,400,000 + [2 x (Leverageable Capital −$22,800,000)].
(3) Over $45,700,000 but not over $68,600,000	$114,200,000 + (Leverageable Capital $45,700,000).
(4) Over $68,600,000	$137,100,000.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 2, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8–29027 Filed 12–10–08; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L. 104–13), the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision to an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB),
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974.
E-mail address:
OIRA_Submission@omb.eop.gov.
(SSA), Social Security Administration,
DCBFM,
Attn: Reports Clearance Officer,
1332 Annex Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–965–6400,
E-mail address: OPLM.RCO@ssa.gov,

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. Therefore, your comments would be most helpful if you submit them to SSA within 60 days from the date of this publication. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the email address listed above.

1. Claimant's Recent Medical Treatment—20 CFR 404.1512 and 416.912—0960–0292 Form HA–4631 is a questionnaire used by SSA to obtain updated medical evidence. Each claimant who requests a hearing before an Administrative Law Judge (ALJ) has a right to such a hearing once the Disability Determination Service (DDS), at the Reconsideration level, has denied the claim. SSA requests the claimant complete and return the HA–4631 if the claimant's file does not reflect a complete medical history. Because the claimant's situation may change over time, as the claimant proceeds through the appeals process, ALJs must obtain the information on Form HA–4631 to update and complete the record and to verify the accuracy of information previously provided. It is by this process, ALJs can ascertain whether the claimant's situation has changed. The ALJ and Hearing Office (HO) staff use the response to make hearing arrangements for consultative examination(s) and the attendance of an expert witness(es), if appropriate. At the hearing, the ALJ offers any completed questionnaires as exhibits and may use them to refresh the claimant's memory, and to inquire into the matters at issue. The respondents are claimant's requesting hearings on entitlement to benefits based on disability under Titles II and/or XVI of the Social Security Act.

Type of Request: Extension of an OMB-Approved Information Collection.

Number of Respondents: 350,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 58,333 hours.

2. Medicaid Use Report—20 CFR 416.268—0960–0267. SSA uses the information required by this regulation to determine if an individual is entitled to special Title XVI Supplemental Security Income (SSI) payments and, consequently, to Medicaid benefits. The Respondents are SSI recipients for whom SSA has stopped payments based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,000 hours.

3. Application for Parent's Insurance Benefits—20 CFR 404.370–404.374, 20 CFR 404.601–404.603—0960–0012. The Social Security Administration uses Form SSA–7 to collect information used to entitle an individual to his or her parent's insurance benefits. The respondents are claimants who wish to apply to receive their parent's insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 315.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 79 hours.

4. Partnership Questionnaire—20 CFR 404.1080–1082—0960–0025. The Social Security Administration uses the information reported on Form SSA–7104 to establish several aspects of eligibility for Social Security benefits, including the accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings. The respondents are applicants for, and recipients of, Social Security Old Age, Survivors, and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

5. Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502—404.513, 404.515 and 20 CFR 416.550—416.570, 416.572–0960–0037. The overpaid individual uses the SSA–632–BK to request a waiver of recovery of an overpayment. The individual explains why they feel they are without fault in causing the overpayment and provides financial information, so SSA can determine whether recovery would cause financial hardship. If the individual agrees to repay the overpayment, they can use the SSA–632–BK to inform SSA they want to repay at a monthly rate that would take more than thirty-six months to recover the overpayment. The individual can also use the SSA–632–BK to request a different rate of recovery. In those cases, they must provide financial information to SSA for a determination of how much the overpaid person can afford to repay each month. Respondents are overpaid beneficiaries or claimants who are requesting a waiver of recovery of the overpayment, or a lesser rate of withholding.

Type of Request: Revision of an OMB-approved information collection.

Reason for completing form	Number of respondents	Frequency of response	Average burden per response	Total annual burden
Request Waiver	400,000	1	2 hours	800,000
Request Change	100,000	1	45 minutes	75,000
Totals	500,000			875,000

6. Statement of Funds You Provided to Another and Statement of Funds You Received—20 CFR 404.1520(b), 404.1571–.1576, 404.1584–.1593 and 416.971–.976—0960–0059. Form SSA–821–BK is used by SSA field offices to obtain work information from recipients while conducting face-to-face interviews, telephone interviews and by mail, during the initial claims process, during the continuing disability review process and whenever work issues arise in SSI claims. SSA's Processing Centers and the Office of Disability and International Operations use the form to obtain post-adjudicative work issues from recipients by mail. The primary purpose of this form is to collect recipient employment information in order to determine whether or not recipients have worked in employment after becoming disabled and, if so, whether the work is SGA. SSA will review and evaluate the data to determine if the recipient continues to meet the disability requirement of the law. The respondents are Social Security Disability Applicants, Beneficiaries, and Supplemental Security Income Applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 225,000 hours.

7. Application for Supplemental Security Income —20 CFR 416.305–416.335, Subpart C—0960–0444. Form SSA–8001–BK collects information SSA uses to determine an applicant's eligibility for SSI, and the amount of SSI benefits. SSA employees secure this information during interviews conducted with members of the public who wish to file for SSI benefits. This form is used for two purposes: (1) To formally deny Supplemental Security Income benefits for non-medical reasons when information provided by the applicant results in ineligibility; OR (2) to establish a disability claim, but defer the complete development of non-medical issues until the disability is approved. The respondents are recipients for Supplemental Security Income benefits.

Type of Request: Extension of an OMB-approved information collection.

Form type	Number of respondents	No. of minutes to complete form	Burden hours
MSSIC	711,135	15	177,784
MSSIC/Signature Proxy	237,045	14	55,311
Paper	19,351	18	5,805
Totals:	967,531		238,900

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–3758, or by writing to the above listed address.

1. Accelerated Benefits Demonstration Project—0960–0747

Background

In early 2007, SSA obtained OMB approval for the Accelerated Benefits Demonstration Project, a multi-phase study designed to assess whether providing new SSDI recipients with certain benefits would stabilize or improve their health and help them return to work early. In this long-term study, we assigned new SSDI recipients (*i.e.*, those who had just begun receiving disability benefits and who had at least 18 months remaining before they qualified for Medicare) to three groups. The three groups consisted of: (1) A control group who would just receive regular SSDI benefits; (2) a treatment group who would receive immediate access to health care benefits; and (3) a treatment group who would receive health care benefits and additional care management, employment, and benefits services and support. The study, which research contractors and health care experts are conducting for SSA, assess if the health care and other benefits help beneficiaries improve and return to work earlier, and asses if there is a difference between the treatment groups.

Update/Current ICR

Having (1) Assigned eligible beneficiaries into one of the three participant groups described above and (2) conducted a baseline and six-month follow-up surveys with these beneficiaries, SSA is now ready to move on to the next phase of the study: A 12-month follow-up survey. This ICR is for the 12-month follow-up survey, which we plan to conduct beginning in March 2009. We will use telephone interviews for the survey, with in-person follow-up for non-responders as necessary. We will attempt to contact all 2,000 participants and expect to complete follow-up interviews with 1,600 of them (80 percent). The purpose of the survey is to explore participants' experiences after one year in the program, which will provide initial data on the effects of the health care and ''heath care plus'' treatments. The respondents are SSDI beneficiaries participating in this study.

Burden Data for 12-Month Follow-Up Survey

Type of Request: Revision to an existing OMB-approved information collection.

Number of Respondents: 1,600.

Frequency of Response: 1.

Average Burden per Response: 45 minutes.

Estimated Annual Burden: 1,200 hours.

2. Request To Be Selected as a Payee—20 CFR 404.2010–404.2055, 416.601–416.665—0960–0014

An individual applying to be a representative payee for a Social Security or SSI recipient completes Form SSA–11–BK. SSA designed the form to aid the investigation of a payee applicant. SSA uses the information to establish the applicant's relationship to the beneficiary, his/her justification and his/her concern for the beneficiary, as well as the manner in which the applicant will use the benefits. The respondents are representative payee applicants for Titles II, VIII, and XVI.

Type of Request: Revision of an OMB-approved information collection.*11/60.

Number of Respondents: 1,500,000.

Estimated Annual Burden: 248,335 hours.

INDIVIDUALS/HOUSEHOLDS (90%):

Collection method	Number of respondents	Frequency of response	Average burden per response	Total annual burden
Representative Payee System (RPS)	135,000	1	10.5	23,625
RPS/Signature Proxy	765,000	1	9.5	121,125
Paper Version	450,000	1	10.5	78,750
Totals	1,350,000			223,500

PRIVATE SECTOR (9%):

Collection method	Number of respondents	Frequency of response	Average burden per response	Total annual burden
RPS	13,500	1	10.5	2,363
RPS/Signature Proxy	76.500	1	9.5	12,113
Paper Version	45,000	1	10.5	7,875
Totals	135,000			22,351

STATE/LOCAL/TRIBAL GOVERNMENT (1%):

Collection method	Number of respondents	Frequency of response	Average burden per response	Total annual burden
RPS	1,500	1	10.5	263
RPS/Signature Proxy	8,500	1	9.5	1,346
Paper Version	5,000	1	10.5	875
Totals	15,000			2,484
Grand Total:	1,500,000			248,335

3. Report on Individual With Mental Impairment—20 CFR 404.1513 & 416.913—0960–0058

SSA uses Form SSA–824 to obtain medical evidence from medical sources who have treated the claimant for a mental impairment. SSA uses the information collected on this form to establish whether a claimant filing for disability benefits has a mental impairment that meets the statutory definition of disability in the Social Security Act. The respondents are mental impairment treatment facilities.

Type of Request: Extension of an OMB-approved information collection.

Type of respondents	Number of respondents	Frequency of response	Average burden per response	Total annual burden
Private Sector	25,000	1	36	15,000
State DDSs (State/Local Government)	25,000	1	36	15,000
Totals	50,000			30,000

4. SSI Notice of Interim Assistance Reimbursement (IAR)—0960–0546

Within this Notice, the phrase ''IAR agency'' refers to either a state or a local agency that receives Interim Assistance Reimbursement (IAR).

Section 1631(g) of the Social Security Act authorizes SSA to reimburse an IAR agency from an individual's retroactive Supplemental Security Income (SSI) payment for assistance the IAR agency gave the individual for meeting basic needs while an SSI claim was pending or SSI payments were suspended or terminated. The state or local agency must have an IAR agreement with SSA to participate in the IAR program.

The individual receiving the IAR payment must sign an authorization form with an IAR agency to allow SSA to repay the IAR agency for funds paid in advance prior to SSA's determination on the individual's claim. The authorization represents the individual's intent to file for SSI if he/she has not filed an application prior to SSA receiving the authorization.

Agencies who wish to enter into an IAR agreement with SSA must meet the following requirements:

(a) *Reporting Requirements:* Each IAR agency agrees to: (1) Notify SSA of receipt of an authorization for initial claims or cases being appealed, and submit a copy of that authorization either through a manual or electronic process; (2) inform SSA of the amount of reimbursement; (3) submit a written request for dispute resolution on a determination; (4) notify SSA of interim assistance paid (using the SSA–8125 or the SSA–L8125–F6); (5) inform SSA of any deceased claimants who participate in the IAR program; and (6) review and sign an agreement with SSA.

(b) *Recordkeeping Requirements:* The IAR agencies agree to retain all notices, agreement, authorizations, and accounting forms for the period defined in the IAR agreement for the purposes of SSA verifying transactions covered under the agreement.

(c) *Third Party Disclosure Requirements:* Each participating IAR agency must agree to send written notices from the IAR agency to the recipient regarding payment amounts and appeal rights.

(d) *Periodic Review of Agency Accounting Process:* The IAR agency must make available for SSA review and verification the IAR accounting records of paid cases. SSA conducts reviews either onsite or through the mail of the authorization forms, notices to the claimant and accounting forms. Upon completion of the review, SSA provides a written report of findings to the IAR agency director.

SSA is currently in the process of automating the IAR process. SSA completed Phase 1 of the automated process, called eIAR, in June 2008 by creating a database that will allow real-time updates for IAR cases. Phase 2 (targeted for 2009) will eliminate the paper Forms SSA–8125 and SSA–L8125–F6. SSA will receive and send all exchanges of information through electronic mail (e-mail) and a secure Internet site. The eIAR process will store IAR agency accounting and SSA payment data for use by SSA regional office staff for auditing the IAR agency records. The IAR agency will have access to IAR information (past and present) for their purposes. Respondents are IAR agencies.

Type of Request: Revision of an OMB-approved information collection.

REPORTING REQUIREMENTS

Type of request	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden hours (hours)
Notification of Receipt of Authorization (Electronic Process)	11	8,856	97,416	1	1624
Submission of copy of Authorization (Manual Process)	26	792	20,592	3	1030
Notification to SSA of Amount of Reimbursement	39	577	22,503	30	11,252
Request for Determination—Dispute Resolution	2	1	2	15	1
Form SSA–8125	39	1282	49,998	10	8,333
Form SSA–L8125–F6	39	1282	49,998	10	8,333
eIAR Process	39	2564	99,996	8	13,333
Notification to SSA of Deceased Claimant	20	2	40	15	10
Review/Signing Agreements	39	1	39	[1]12	468

[1]Hours.

RECORDKEEPING REQUIREMENTS

	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden hours
Maintenance of Authorization Forms	39	3,189	124,371	3	6219
Maintenance of Accounting Forms and Notices	39	3,189	124,371	3	6219

THIRD PARTY DISCLOSURE REQUIREMENTS

	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated annual burden hours
Written Notice from IAR agency to Recipient Regarding Amount of Payment	39	576	22,464	7	2621

PERIODIC REVIEW OF AGENCY ACCOUNTING PROCESS

	Number of respondents	Frequency of response	Number of responses	Average burden per response (hours)	Estimated annual burden hours
Retrieve and Consolidate Authorization and Accounting Forms	12	1	12	3	36
Participate in Periodic Review	12	1	12	16	192
Correct Administrative and Accounting Discrepancies	6	1	6	4	24

TOTAL ADMINISTRATIVE BURDEN

	Number of respondents	Frequency of response	Number of responses	Average burden per response	Estimated annual burden hours
Totals	39	.....	611,820	.....	59,695

5. General Request for Social Security Records—eFOIA—20 CFR 402.130—0960–0716

SSA uses the information collected on this electronic request for Social Security records to respond to the public's request for information under the Freedom of Information Act (FOIA). SSA also tracks the number and type of requests, fees charged and payment amounts, and whether SSA responds within the required 20 days. Respondents are members of the public including individuals, institutions, or agencies requesting information/documents under FOIA.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 250 hours.

Dated: December 5, 2008.

John Biles,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. E8–29332 Filed 12–10–08; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Social Security Disability Program Demonstration Project: Benefit Offset Pilot Demonstration

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: We are announcing our plans to terminate the Benefit Offset Pilot Demonstration (BOPD) project, which relates to the disability program under title II of the Social Security Act (the Act). In this demonstration, we are testing modifications to current program rules that apply to working title II disability beneficiaries. We are also modifying current rules for making outcome payments to providers of services under the Ticket to Work and Self-Sufficiency program (Ticket to Work program).

DATES: *Effective Dates:* Effective January 1, 2009, we are terminating the alternative program rules for treatment group participants of the BOPD who have not completed their trial work periods as of December 31, 2008. We are continuing the alternative program rules for treatment group participants of the demonstration who have completed their trial work periods as of December 31, 2008, until they complete their 72-month reentitlement periods.

FOR FURTHER INFORMATION CONTACT: Mark Green by e-mail at *mark.green@ssa.gov*, by telephone at (410) 965–9852, or by mail at Social Security Administration, Office of Program Development and Research, 3–E–26 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235.

SUPPLEMENTARY INFORMATION: We are conducting this project under the demonstration authority provided in section 234 of the Act.

Treatment of Work Activity Under Current Title II Disability Program Rules

Section 222(c) of the Act and 20 CFR 404.1592 provide title II disability beneficiaries with a 9-month trial work period. During the trial work period, a title II disability beneficiary may test his ability to work and still be considered disabled.

Sections 223(a)(1) and 202(d)(1), (e)(1), and (f)(1) of the Act provide that

a title II disability beneficiary can continue to test his ability to work for an additional period immediately following completion of the 9-month trial work period if his disabling impairment continues. This additional period, known as the reentitlement period, ends after 36 months or when the individual ceases to have a disabling impairment, whichever is earlier. Under these sections of the Act, a title II disability beneficiary's entitlement to benefits will not terminate due to his performance of substantial gainful activity (SGA) during the reentitlement period. However, section 223(e) of the Act provides that, subject to a ''grace period'' (described below), we will not pay benefits to the disability beneficiary or anyone collecting benefits on his account for any month in which he performs SGA during the reentitlement period. Sections 404.401a and 404.1592a of our regulations reflect these provisions of the Act.

We will find that the beneficiary's disability ceased in the first month he performs SGA after the trial work period (§ 404.1592a(a)(1)). If we determine that his disability ceased after the reentitlement period ended, then entitlement to and payment of benefits terminates with the second month after the month disability ceased. If the month disability ceased due to performance of SGA occurs during the reentitlement period, different rules apply. In that situation, we will find that entitlement to disability benefits terminates in the first month after the end of the reentitlement period in which he engages in SGA (§ 404.1592a(a)(3)).

If we determine that a beneficiary's disability ceased during the reentitlement period because he performed SGA, we will pay benefits for the first month after the trial work period in which he engages in SGA and for the two succeeding months, whether or not he performs SGA in those months (§ 404.1592a(a)(2)). This three-month period is the ''grace period.'' After the grace period, we will not pay benefits for any month during the reentitlement period in which the beneficiary performs SGA. However, we will pay benefits for any month during the reentitlement period in which the beneficiary does not perform SGA. When we determine whether a beneficiary performed SGA in a month after the grace period, we consider only his work in, or earnings for, that month. We do not apply the rules regarding averaging of earnings or unsuccessful work attempts.

The Benefit Offset Pilot Demonstration

Section 234 of the Act directs us to carry out experiments and demonstration projects to determine the relative advantages and disadvantages of various alternative methods for treating work activity of title II disability beneficiaries. Under Section 234, we may waive compliance with the benefit requirements of title II of the Act and the requirements of section 1148 of the Act, as they relate to the title II program, insofar as is necessary for a thorough evaluation of the alternative methods under consideration.

On August 1, 2005, we began a pilot demonstration testing the effects of applying a benefit offset as an alternative to the current rules for treating the work activity of a title II disability beneficiary who has completed a 9-month trial work period. Under the benefit offset in this demonstration project, we reduce disability benefits $1 for every $2 a beneficiary earns above the SGA threshold amount instead of stopping benefit payments.

We implemented the BOPD for the following reasons:

- To test the effectiveness of modifications to current program rules in encouraging title II disability beneficiaries to return to work or increase their earnings; and
- to obtain information that we can use to assist in developing a more expansive benefit offset demonstration project, which we plan to conduct at nationally representative sample sites.

We entered into contracts with Connecticut, Utah, Vermont, and Wisconsin to assist us in conducting this pilot demonstration to test a benefit offset in concert with various support services and to obtain information to help in the planning phases of the national demonstration project.

Alternate Title II Program Rules for Participants in the Treatment Group of the BOPD

For this demonstration project, we have waived certain provisions relating to the reentitlement period contained in sections 223(a)(1) and (e) and 202(d)(1), (e)(1), and (f)(1) of the Act and in 20 CFR 404.401a and 404.1592a. We have also waived continuing disability review (CDR) requirements under section 221(i) and related provisions of the Act and 20 CFR 404.1589 and 404.1590. Certain title II disability beneficiaries participate in a treatment group of the BOPD. We provided these beneficiaries the opportunity to take advantage of the following alternate program rules.

- For a disability beneficiary who completed a trial work period and whose disability ceased during his reentitlement period because he performed SGA, we pay disability benefits for months after the grace period and during the reentitlement period in which the beneficiary does SGA, subject to application of a benefit offset. Under the offset, we reduce the amount of the monthly benefits by $1 for every $2 the beneficiary earns above the SGA threshold amount. Using our current title II program rules, we determine the amount of monthly title II disability benefits that would have been payable to the beneficiary had he not engaged in SGA. We then apply the benefit offset to this monthly benefit amount.
- We consider the beneficiary's earnings on an annual basis in applying the benefit offset. We use averaging to determine whether the beneficiary's average monthly earnings are above the SGA amount and, if so, calculate the monthly benefit amount. We pay benefits based on the beneficiary's estimated annual earnings and make necessary adjustments when the year ends, or sooner if relevant information is available.
- We provide a reentitlement period of up to 72 months. The reentitlement period ends the last day of the 72nd month following the end of the trial work period or with the month before the first month that the impairment no longer exists or is no longer disabling, whichever is earlier.
- We do not begin a CDR for a beneficiary participating in the treatment group either before or during his extended reentitlement period.
- For persons entitled to dependents' benefits based on the earnings record of a disability beneficiary participating in the treatment group, we may pay dependents' benefits for months in which the disability beneficiary performs SGA after the grace period and during his reentitlement period. We pay monthly dependents' benefits that would have been payable had the disability beneficiary not engaged in SGA.

Alternate Ticket to Work Program Rule Under the BOPD

Under the Ticket to Work program, we may pay outcome payments to a provider of services to whom a title II disability beneficiary has assigned a ticket. Section 1148(h) of the Act and 20 CFR 411.525 provide that we pay outcome payments only for those months for which we do not pay benefits due to the beneficiary's work or earnings. We have waived this

requirement in order to provide an alternate rule for paying outcome payments to a provider of services to whom a beneficiary in the treatment group has assigned a ticket. Under the alternate rule, we may pay outcome payments for months in which the beneficiary has earnings above the SGA amount. We may pay an outcome payment even though we reduce the benefit payment because of earnings instead of stopping the payment.

Terminating the Alternate Rules for BOPD Participants Who Have Not Completed Their Trial Work Periods

In the BOPD, we have been testing the overall effects of a benefit offset under the title II disability program, including its effectiveness in encouraging disability beneficiaries to return to work and its impact on agency operations. We have been gathering information regarding the effect of the availability of a benefit offset on beneficiaries' efforts to work or increase their earnings. In addition, we have been evaluating our procedures to administer the benefit offset under the BOPD. Based on this evaluation, we have concluded that the process developed for administering the benefit offset under the BOPD is inefficient and administratively burdensome.

We have used the information obtained from this pilot demonstration to develop and refine a national benefit offset demonstration project. Over the course of this pilot demonstration project, we shared significant data and analysis with the design contractor for the national demonstration project. Based on this information, the design contractor extensively modified its design proposals. We have concluded the contract for design of the national project, and we are developing a system to provide an efficient method for administering a benefit offset provision under the national demonstration project.

Because the process we developed for administering the benefit offset under the BOPD proved to be inefficient and administratively burdensome, we are curtailing this pilot demonstration project. We are terminating the alternate rules for participants who have not worked long enough or at a sufficient level to qualify for the benefit offset provision. Effective January 1, 2009, we are terminating the alternate title II disability program rules and the alternate Ticket to Work program rule, for participants in the BOPD treatment group who have not completed their trial work periods by December 31, 2008. We will continue the alternate rules for participants in the treatment group who have completed their trial work periods by December 31, 2008, and therefore are eligible for the benefit offset, until these beneficiaries complete their 72-month reentitlement periods.

Dated: December 5, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–29334 Filed 12–10–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6408]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a meeting by conference call on Monday, December 22, 2008 beginning at 11 a.m. Eastern Time. The open portion of the meeting should last approximately twenty minutes and will address a variety of issues and projects related to UNESCO. Additional topic areas that relate to UNESCO may be discussed as needed.

The Commission will accept brief oral comments from members of the public during the open portion of this teleconference meeting. The public comment period will be limited to approximately ten minutes in total with about three minutes allowed per speaker. Members of the public who wish to present oral comments or listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by December 18, 2008. The second portion of the teleconference meeting will be closed to the public to allow the Commission to discuss applications for the UNESCO Young Professionals Program. This portion of the call will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it is likely to involve discussion of information of a personal nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of personal privacy. For more information or to arrange to participate in the open portion of the teleconference meeting, contact Andrew Doran, Deputy Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. *Telephone:* (202) 663–0028; *Fax:* (202) 663–0035; *E-mail: DCUNESCO@state.gov.*

Dated: November 24, 2008.

Alex Zemek,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. E8–29341 Filed 12–10–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF VETERANS AFFAIRS

Copayment for Medication

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice that there is no change in the medication copayment rate for calendar year 2009 and the rate will remain at $8.00. The total amount of copayments in a calendar year for a veteran enrolled in one of the priority groups 2 through 6 shall not exceed the cap of $960.00. These rates are based on the Prescription Drug component of the Medical Consumer Price Index as cited in title 38, Code of Federal Regulations, part 17, section 17.110.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy (163), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is required by law to charge certain veterans a copayment for each 30-day or less supply of medication provided on an outpatient basis (other than medication administered during treatment) for treatment of a non-service connected condition. Public Law 106–117, The Veterans' Millennium Health Care and Benefits Act, gives the Secretary of Veterans Affairs authority to increase the medication copayment amount and to establish a calendar year cap on the amount of medication copayments charged to veterans enrolled in priority groups 2 through 6. When veterans reach the calendar year cap, they will continue to receive medications without additional copayments for that calendar year.

Formula for Calculating the Medication Copayment Amount:

Each calendar year beginning after December 31, 2002, the Prescription Drug component of the Medical Consumer Price Index of the previous September 30 is divided by the Index as of September 30, 2001. The ratio is then multiplied by the original copayment amount of $7.00. The copayment amount of the new calendar year is then

rounded down to the whole dollar amount.

Computation of Calendar Year 2009 Medication Copayment Amount Includes:

a. Prescription Drug Medical Consumer Price Index as of September 30, 2008 = 377.1.

b. Prescription Drug Medical Consumer Price Index as of September 30, 2001 = 304.8.

c. Index = 377.1 divided by 304.8 = 1.2371.

d. (INDEX) × $7 = $8.66.

e. Copayment amount = $8.00.

Dated: December 4, 2008.

Gordon Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–29327 Filed 12–10–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2009 Calendar Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Title 38 of the Code of Federal Regulations (CFR), § 17.101 sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran for : (1) A non-service-connected disability for which the veteran is entitled to care or the payment of expenses for care under a health plan contract; (2) a non-service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The charge tables and supplemental tables that are applicable to this **Federal Register** notice can be viewed on the Veterans Health Administration Chief Business Office's Intranet and Internet Web sites. Certain charges are hereby updated as described in the **SUPPLEMENTARY INFORMATION** Section of this notice. These changes are effective January 1, 2009.

In circumstances when charges for medical care or services provided or furnished at VA expense, by either VA or non-VA providers, have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the Summary section of this notice, acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges are not being changed. Acute inpatient facility charges remain the same as set forth in a notice published in the **Federal Register** on October 1, 2008 (73 FR 57219). VA's current inpatient charge structure utilizes the methodology set forth in 38 CFR 17.101 and does not itemize inpatient bills. Skilled nursing facility/sub-acute inpatient facility charges also remain the same as set forth in a notice published in the **Federal Register** on October 1, 2008 (73 FR 57219).

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2009 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These updated charges are effective January 1, 2009.

In this update, we are retaining the table designations used for HCPCS Level II and Current Procedural Technology (CPT) Codes in the notice posted on the Internet site of the Veterans Health Administration Chief Business Office currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The effective date of this change was December 26, 2007 and the notice can also be found in the **Federal Register** (72 FR 73063). Accordingly, the tables identified as being updated by this notice correspond to the applicable tables posted on the Internet with the notice, beginning with Table C.

VA has updated the list of data sources presented in Supplementary Table 1 to reflect the updated data sources used to establish the updated charges described in this notice.

The list of VA medical facility locations has also been updated. As a reminder, in Supplementary Table 3 we set forth the list of VA medical facility locations, which includes the first three digits of their zip codes and provider based/non-provider based designations.

Consistent with the VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data (Rates).'' The updated data tables and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 4, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–29390 Filed 12–10–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 11, 2008

Part II

Small Business Administration

13 CFR Part 120
Lender Oversight Program; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE14

Lender Oversight Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim Final Rule with request for comments.

SUMMARY: This interim final rule incorporates SBA's risk-based lender oversight program into SBA regulations. Specifically, the rule codifies in SBA regulations SBA's process of risk-based oversight including: Accounting and reporting requirements; off-site reviews/monitoring; on-site reviews and examinations; and capital adequacy requirements. It also codifies SBA Supervised Lender regulation and updates SBA's business loan program regulations to specify program standards. Finally, the rule lists the types of, grounds for, and procedures governing SBA enforcement actions against 7(a) Lenders, Certified Development Companies, Microloan Intermediaries, and Non-Lending Technical Assistance Providers within consolidated enforcement regulations. SBA previously published a Notice of Proposed Rulemaking (NPRM) addressing all of the topics and issues covered by this interim final rule. SBA has already allowed for public comment, reviewed the comments and made changes accordingly. SBA is publishing this rule interim final rather than proceeding to a final rule, however, in order to provide the public with an additional opportunity to comment and to allow for any necessary adjustments as the industry moves through the economic cycle.

DATES: *Effective Date:* January 12, 2009.

Comment Date: Comments must be received on or before March 11, 2009.

ADDRESSES: You may submit comments, identified by RIN number 3245–AE14, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

All comments will be posted on *http://www.Regulations.gov*. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Linda Rusche, Supervisory Financial Analyst, Office of Credit Risk Management. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its discretion, of whether the information is CBI and, therefore, will be published or not.

FOR FURTHER INFORMATION CONTACT: Linda Rusche, Supervisory Financial Analyst, at (816) 426.4860 or *linda.rusche@sba.gov*, or Bryan Hooper, Director, Office of Credit Risk Management, at (202) 205.3049 or *bryan.hooper@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA Mission and Lender Oversight

In 1953, Congress established the Small Business Administration. The SBA's mission is to aid, counsel, and assist America's small businesses. Central to the mission is the intention that SBA assists America's small businesses' access to capital to start, continue operations and grow. SBA assists small businesses' access to credit through numerous finance programs, including but not limited to the section 7(a) guaranty loan program, the section 504 Certified Development Company debenture program, and SBA's Microloan Intermediary program authorized under 15 U.S.C. 636 and 15 U.S.C. 697a. In each of these programs Lenders/Intermediaries partner with SBA to provide America's small businesses with needed access to capital to support our nation's economy. In partnering, SBA delegates to many Lenders the authority to originate, service, and liquidate SBA guaranteed loans.

Today approximately 4,500 7(a) Lenders, Certified Development Companies (CDCs) and Intermediaries participate in SBA lending programs. These Lenders hold approximately $67 billion in 7(a) and 504 loans outstanding. As the SBA portfolio grows and SBA places increasing responsibility on Lenders, SBA must have the necessary controls to ensure that SBA Lenders' SBA operations are well managed and to avoid undue losses. Such controls provide for the long-term health of the business loan programs and sustain our ability to meet our statutory mission to assist small businesses in obtaining access to capital.

Central to the establishment of lender oversight controls are their incorporation in SBA rules and regulations. Therefore, on October 31, 2007, SBA published in the **Federal Register** SBA's Proposed Lender Oversight Program rule. (72 FR 61751) The proposed rule was comprehensive, covering 7(a) program, 504 program, and Microloan program monitoring and enforcement and also included updates to business loan program regulations consistent with the oversight program. On December 20, 2007, SBA published a notice extending the comment period for the proposed rule to February 29, 2008 allowing the public additional time to provide feedback. (72 FR 72264) Finally, in April 2008, SBA held public meetings on the proposed rule in eight cities nationwide to obtain a fuller understanding of the proposed rule comments. Those cities included: San Francisco, CA; Los Angeles, CA; Boston, MA; Philadelphia, PA; Atlanta, GA; Dallas, TX; Kansas City, MO; and Chicago, IL.

II. Comments Received and Changes Made

SBA received approximately 220 comments on the proposed regulations. One hundred and eighty-seven comments were from SBA Lenders, including approximately 100 comments from 7(a) Lenders, 80 comments from CDCs, six comments from SBA Supervised Lenders, and one comment from a Microloan Intermediary. SBA also received approximately 20 comments from non-Lenders, including five comments from trade organizations and several comments from legal and accounting professionals, consultants, and state government organizations. The remaining comments were anonymous.

Overall, both the written and oral comments were supportive of lender oversight. Commenters affirmed their support for lender oversight and recognized SBA's ''substantial progress'' in the audit and review process areas. Commenters agreed that many of the provisions of the proposed rule were indeed necessary. Comment discussions on individual regulations within the rule tended to be concentrated on certain specific topics (e.g., the Single Audit Act, specificity on what constitutes ''satisfactory SBA performance'', CDC annual report submissions, Risk Rating System implementation, and administrative appeals).

SBA appreciated the comments received and has incorporated many comment suggestions into this interim final rule. Among the provisions where SBA either adopted suggestions or made revisions are provisions on the Single Audit Act, criteria for satisfactory SBA performance, CDC annual report submissions, and Risk Rating System implementation. Comments pertaining to specific provisions are summarized below, along with any changes made to those provisions. Provisions not included in this analysis did not receive significant comments or, in most cases, received no comments; therefore they are adopted as proposed. A detailed discussion of the significant comments and changes made by section follows.

Multiple sections—Agency Discretion. The proposed rule included several references to SBA's ''sole discretion'' in Agency determinations. Approximately 130 commenters objected to this terminology. It is not uncommon for SBA to provide the public notice in its regulations as to those matters that involve some degree of Agency judgment. Some commenters were concerned that these references to ''discretion'' or ''sole discretion'' implied that the Agency could make determinations not subject to any form of review. That is simply not the case. While courts will often defer to an agency when it takes actions involving the use of agency discretion, such actions may not be arbitrary or capricious. Nevertheless, in finalizing these regulations, SBA deleted the reference to ''sole'' before discretion. SBA deleted the language because we do not believe that it imparted to the Agency any meaningful distinction than regular Agency discretion.

Multiple sections—Satisfactory SBA Performance. Approximately 125 commenters requested that SBA provide information on the factors it expects to consider in addition to the Risk Rating when evaluating satisfactory SBA performance. As stated in the preamble in the Notice of Proposed Rulemaking published October 31, 2007, other factors SBA anticipates considering may include: On-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, other performance related measurements and information, and contribution toward SBA mission. In response to the comments, SBA has incorporated these examples of other factors in the interim final rule.

These same commenters also requested that SBA provide the relative weight of the factors it will consider when evaluating satisfactory SBA performance. SBA has considered these comments, but cannot publish the relative weights of the Risk Rating and any other factors it may consider in determining satisfactory SBA performance. Satisfactory SBA performance is not determined by using any arithmetic function. The weight attributed to any factor in evaluating a Lender's SBA performance may vary depending on the particular circumstances, and as a result may need to be determined on a case by case basis. However, SBA does plan to provide additional guidance in its Standard Operating Procedures (SOPs). In the public meetings, SBA requested comments regarding the consideration of contribution toward SBA mission in the determination of satisfactory SBA performance; however, no substantive comments were received. Similarly, the Agency requests comments in this interim final rule regarding how to best consider contribution toward SBA mission in the determination of SBA performance.

Section 120.10—Definitions. In the interim final rule, SBA has added a definition of ''Lender Oversight Committee,'' made a technical change to the definition of ''Less Than Acceptable Risk Rating'' and has revised the definition for Non-Federally Regulated Lender to more closely conform to the definition in section 3(r) of the Small Business Act. (15 U.S.C. 632) SBA has also added a definition of ''Person,'' which had previously been defined with reference to § 145.985 or its successor regulation. Section 145.985 was removed from Title 13 of the Code of Federal Regulations effective September 18, 2007, and now appears in the government-wide non-procurement debarment and suspension regulations at 2 CFR Parts 180 and 2700. Rather than reference a definition outside of 13 CFR, SBA determined to incorporate the definition of ''Person'' within § 120.10.

Section 120.451—PLP Status Approvals. The proposed rule provided that PLP status approvals and renewals would be made by the appropriate official in the Office of Capital Access in accordance with SBA's published Delegations of Authority. Some commenters requested that such approvals be made by the Director of Financial Assistance with input from the Director in the Office of Credit Risk Management and that the regulations include a specific statement to that effect. The foregoing is a matter of agency organization, procedure, and practice and as such it is appropriate for inclusion in the Agency's published Delegations of Authority. To include such specificity in the regulations would unduly limit the Administrator's flexibility to manage internal agency procedures. Therefore, SBA is adopting § 120.451 as it was proposed.

Sections 120.460–120.465—SBA Supervised Lender Regulation. Approximately 70 commenters supported greater regulatory oversight for SBA Supervised Lenders in general. However, a few commenters requested that SBA reduce the reporting requirements in proposed § 120.464. SBA must have access to certain information to properly supervise SBA Supervised Lenders, and the reports required in this rule provide SBA with the needed information. SBA does understand the need to minimize Lender costs where appropriate. Consequently, the proposed rule provided for a waiver of certain reporting requirements for good cause. In addition, SBA will work to try to reduce the burden by coordinating with other bank regulators and by working with Lenders to accept electronic transmissions of the information to be collected. SBA thus specifically requests comments on how to further reduce such reporting requirements without sacrificing proper oversight.

Section 120.463(b)—Regulatory accounting for SBA Supervised Lenders. The interim final rule includes a technical correction in § 120.463(b). Specifically, SBA has clarified that SBA Supervised Lenders that are non-public companies must adhere to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA), and SBA Supervised Lenders that are public companies must adhere to the standards adopted by the Public Company Accounting Oversight Board (PCAOB). The PCAOB was established by the Sarbanes-Oxley Act of 2002.

Section 120.472—Higher Individual Capital Requirement. SBA received approximately 65 comments supporting the proposed capital requirements for Small Business Lending Companies (SBLCs). Section 120.472, based on current regulations of a Federal Financial Institution Regulator, contains six specific factors that SBA would consider in determining whether an SBA Supervised Lender should have a higher capital requirement. The commenters also suggested, however, that some of the factors that SBA listed in § 120.472 may be overly broad and vague. In particular, two factors were cited by commenters as broad or vague: management views of senior management, and other risk related factors. SBA does not agree. Examples of ''management views of senior

management'' and ''other risk related factors'' would include, for example, public announcements by management regarding the net equity value of the SBA Supervised Lender or the writedown of the value of the SBA Supervised Lender's assets. SBA expects to provide further guidance on the factors in the SOPs.

Several commenters also suggested that the Lender Oversight Committee (LOC) rather than the Associate Administrator of Capital Access make the determination as to whether to require additional capital. The provision in proposed § 120.472 is consistent with statutory authority, which limits delegation of authority to issue a capital directive to the Associate Deputy Administrator level, retitled as the Associate Administrator level. Because it is consistent with the statute, SBA is adopting the provision as proposed.

Section 120.826—CDC Basic Requirements. SBA received a large number of comments on proposed § 120.826, which governs basic requirements for operating a CDC. As detailed below, comments focused mainly on subparts (b), (c), and (e): internal control requirements, annual audited financial statements, and Single Audit Act requirements.

Section 120.826(b)—CDC Internal Control Policy. Section 120.826(b) requires each CDC's board of directors to adopt an internal control policy. The majority of commenters recognized the need for internal control requirements generally, but approximately 45 commenters requested that SBA consider the size and organizational structure of CDCs when reviewing compliance, particularly compliance with separation of duties requirements. Some commenters stated that SBA's proposed internal control requirements were comparable to those of a commercial lending institution; they expressed concern that the requirements would be excessive given the generally smaller size of CDCs. In addition, several CDCs requested that SBA provide a sample internal control policy. SBA recognizes that CDCs vary in size and sophistication, and thus expects that CDCs' levels of internal controls will vary accordingly. We believe that the proposed rule allows for such flexibility. Consequently, the provision will be adopted in this interim final rule as proposed. Nevertheless, SBA will work with representatives of the CDC industry to identify resources to assist CDCs in developing internal controls appropriate for their various sizes and structures.

Section 120.826(c)—CDC Annual Report Submission. In § 120.826(c), SBA proposed requiring all CDCs to submit annual audited financial statements. Current SBA policy does not require audited financial statements from CDCs with 504 loan portfolios of less than $20 million outstanding. Approximately 40 commenters suggested that the level of risk by CDCs with small portfolios did not justify the increase in costs associated with an annual audit. SBA has considered these comments and has decided to keep the audit requirement at the current level but retain the proposed rule's requirement for the qualifications of the accountant as specified in § 120.826(d). Accordingly, the interim final rule has been revised to state that CDCs with portfolios of $20 million or more in outstanding 504 loans submit audited annual financial statements, and that CDCs with portfolios of less than $20 million submit annual financial statements reviewed by an independent CPA.

Section 120.826(e)—Single Audit Act. SBA received approximately 70 comments from CDCs concerning proposed § 120.826(e), which would have required not-for-profit CDCs to comply with the audit requirements contained in the Single Audit Act (31 U.S.C. 7501 *et seq.*) and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Commenters were overwhelmingly opposed to this provision. Commenters argued that the Single Audit Act should not be applicable to CDCs given the unique nature of the program funding, that the audit would be duplicative of SBA's on-site CDC reviews, and that the requirement would impose significant increases in annual audit costs. CDCs also anticipated difficulty in procuring auditors qualified to perform Single Audit Act audits, particularly for CDCs located in rural areas.

SBA consulted with OMB throughout the comment period concerning the applicability of the Single Audit Act to CDCs. OMB is responsible for providing interpretations of Single Audit Act policy requirements (stated in OMB Circular A–133), and assistance to Federal agencies to ensure uniform, effective, and efficient implementation of the Single Audit Act. In light of the more than 25 year successful history of the CDC program, the unique nature of the program funding and the CDCs' administrative and financial role in it, and the comprehensive oversight SBA currently performs on CDCs for program compliance and results, OMB and SBA have determined that the Single Audit Act does not apply to the CDC program. SBA's current oversight includes: Annual CDC financial reporting, quarterly off-site monitoring of all CDCs' portfolio performance and risk, more detailed on-site reviews of all larger CDCs and certain smaller CDCs identified as high-risk, corrective action plans for SBA findings from on-site reviews, and regular program reviews on CDC status and program compliance. This determination applies only to SBA's CDC program; CDCs that participate in other Federal programs may still be subject to the Single Audit Act as a result of their activities in those programs. Because the Single Audit Act does not apply to SBA's CDC program, proposed § 120.826(e) is deleted in the interim final rule.

Section 120.830—CDC Annual Report Deadline. SBA received approximately 75 comments regarding proposed § 120.830(a), which would have required each CDC to submit its annual report to SBA within 90 days after the end of the CDC's fiscal year. Commenters were unanimously opposed to this proposed provision, and recommended that SBA keep the current report submission deadline of 180 days. Some commenters stated that accelerating the report submission deadline would create a financial hardship, particularly for smaller rural CDCs with limited access to auditors. Other commenters noted that some CDCs have a lengthy and complex audit process because they are part of larger organizations, such as councils of governments. Numerous CDCs stated that their fiscal year ends in September, which is a very busy time for CPA firms. Finally, many commenters noted that SBA had a 90 day reporting deadline prior to 2003, when the deadline was extended to 180 days in order to permit CDCs more time to provide financial statements with the required level of review. SBA has considered these comments, and has decided not to adopt proposed § 120.830(a); the CDC annual report submission deadline will remain unchanged at 180 days. In addition, § 120.830(a) has been revised to reflect the different reporting requirements for audited and reviewed financial statements.

Section 120.1005—Bureau of PCLP Oversight. Section 120.1005, which establishes the Bureau of PCLP Oversight, received a large amount of support from commenters. SBA received approximately 50 comments in favor of the proposed provision. In addition, approximately 55 commenters suggested that the Bureau of PCLP Oversight conduct random audits of loans submitted by PCLP CDCs to ensure compliance with SBA policies and regulations, particularly environmental and appraisal report documentation

requirements. SBA has reviewed these comments and is considering conducting audits of PCLP CDC loans through the Bureau of PCLP Oversight or otherwise. Section 120.1005 is adopted as proposed.

Section 120.1015—Risk Rating System. SBA received approximately 170 comments on proposed § 120.1015, which incorporates SBA's Risk Rating System into the loan program regulations. Commenters questioned the incorporation of the Risk Rating System into SBA's regulations at this time, citing concerns regarding the effectiveness and appropriateness of using this sophisticated tool developed by private sector leaders to evaluate business loan portfolios. Many commenters also noted that the Risk Rating System has not yet been through an entire economic cycle. In addition, approximately 100 commenters requested that SBA obtain third-party validation of the Risk Rating System.

These commenters also objected to incorporation of the Risk Rating System into certain specific provisions of the proposed regulations. Multiple proposed provisions contained the requirement that a Lender have or maintain ''satisfactory SBA performance,'' which SBA proposed to determine by considering the Lender's Risk Rating, among other factors. Specifically, SBA proposed to incorporate ''satisfactory SBA performance,'' and thus the Risk Rating, in the following proposed provisions: § 120.410(a), Requirements for all participating Lenders; § 120.424(b), What are the basic conditions a Lender must meet to securitize?; § 120.433(b), What are the SBA's other requirements for sales and sales of participating interests?; § 120.434(c), What are SBA's requirements for loan pledges?; § 120.451(b)(3), How does a Lender become a PLP Lender?; § 120.630(a)(5), Qualifications to be a Pool Assembler; § 120.710(e)(1), What must an Intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?; § 120.812(c), Probationary period for newly certified CDCs; § 120.820(c), CDC non-profit status and good standing; § 120.839, Case-by-case application to make a 504 loan outside of a CDC's Area of Operations; and § 120.841(c), Qualifications for the ALP.

SBA has considered these comments. We believe, however, that the Risk Rating System is a reasonable internal tool for assessing portfolio risk, because it incorporates past, present, and future predictive performance to rate Lenders' relative risk to SBA and provides SBA with a comprehensive risk management tool previously unavailable to the Agency. The Risk Rating System was developed with the assistance of Dun & Bradstreet and Fair Isaac, private industry leaders in predictive modeling and risk rating systems. These companies have performed annual validation testing at both the loan and Lender level since 2004. In addition to the validation testing, SBA has provided to Lenders and trade groups data demonstrating the correlation between the Risk Ratings and portfolio risk factors in various presentations given between May and September, 2008. We note that SBA may amend the Risk Rating System from time to time. Any such amendments will be published in the **Federal Register**. We also note that a Lender's Risk Rating will be used in combination with other factors when evaluating satisfactory SBA performance and that SBA does not expect that the Risk Rating would be the sole basis for taking enforcement action. The relevant provisions of this interim final rule have been revised to reflect this expectation. Conversely, a good Risk Rating does not preclude SBA from taking actions based on other factors or grounds. Therefore, SBA is adopting § 120.1015 as proposed.

Section 120.1050—On-Site Review/Exam Responses. SBA received seven comments on § 120.1050, which describes SBA's on-site examinations of SBA Supervised Lenders and on-site reviews of the SBA operations of SBA Lenders. Two commenters stated that SBA on-site reviews are duplicative of the safety and soundness reviews already conducted by Federal regulators. One of these commenters stated that its Federal financial regulator examines the Lender's SBA portfolio for safety and soundness, although the regulator does not look at compliance with SBA program regulations and policies. SBA has considered these comments, but believes that its on-site reviews and examinations are a critical component of Lender oversight, and are necessary to ensure the continued integrity of SBA's lending programs. SBA notes that other Federal credit guaranty agencies perform similar reviews of their lenders and the management of the agencies' guaranteed loan portfolios. Furthermore, to SBA's knowledge, the Federal financial regulators do not perform an equivalent review of SBA loan portfolios during safety and soundness reviews. SBA will, however, continue to make efforts to coordinate its oversight with other bank regulators. If SBA is able to leverage the efforts of Federal bank regulators in the future, it could lead to a more streamlined review by SBA. Therefore § 120.1050 remains unchanged from the proposed regulation.

Section 120.1060—Confidentiality of Reports, Risk Ratings and Related Confidential Information. SBA received approximately 50 comments on § 120.1060, SBAs confidentiality provision for Risk Ratings, review and examination reports, and other related confidential information. Although all of the commenters supported confidentiality requirements generally, some commenters thought that the requirements in proposed § 120.1060 were too restrictive. These commenters recommended modifying § 120.1060 to allow Lenders to share ''general information'' on their review and examination results with other Lenders and trade organizations in order to develop industry best practices. SBA has considered these comments and recognizes the commenters' desire to develop best practices. SBA believes, however, that allowing Lenders to share ''general'' review and examination report information is too indefinite a standard, and would increase the risk that confidential information would be disclosed to the public. Alternatively, SBA will seek to share best practices with trade organizations and Lenders using aggregate information obtained from Lender review and examination reports. Therefore, § 120.1060 is adopted as proposed.

Section 120.1400—Grounds for Enforcement Actions—SBA Lenders. SBA received comments on several provisions of proposed § 120.1400, which details the grounds for enforcement actions against SBA Lenders; these comments are detailed below.

Section 120.1400(a)—Grounds for enforcement actions—Agreement. Some commenters objected to 120.1400(a) because it references Form 750, the SBA Loan Guaranty Agreement. These commenters argued that the Agreement is out of date and, therefore, should not be referenced. SBA disagrees with the comment that the form should not be referenced. The Form 750 contains the Lender's agreement to participate in SBA programs in accordance with program rules and regulations, and every 7(a) Lender has executed a Form 750.

Section 120.1400(b)—Grounds for enforcement actions—Scope. Approximately 85 commenters requested that § 120.1400(b), which defines the scope of the regulation, be clarified. In response to the comments, SBA has revised subsection (b) for clarity.

Section 120.1400(c)—Grounds for enforcement actions—Grounds in

General. Subsection (c) lists twelve enforcement grounds that generally apply to all SBA Lenders. Some commenters were concerned that the enforcement grounds did not provide a degree of certainty regarding which enforcement grounds would trigger particular enforcement actions. SBA believes that enforcement actions will depend upon the particular facts and circumstances of individual cases; therefore SBA cannot be constrained to a one size fits all approach to application of enforcement actions. However, SBA does plan on providing additional enforcement action guidance through SBA's SOPs.

SBA also received approximately 90 comments on § 120.1400(c)(4), which describes failure to lend in a commercially reasonable and prudent manner, evidence of which may include, but is not limited to, the SBA Lender having a repeated Less Than Acceptable Risk Rating or an on-site review/examination assessment which is Less Than Acceptable. Commenters requested that SBA specify how many low Risk Ratings a Lender could be assigned before it would be subject to an enforcement action. Commenters also stated that an enforcement action should not be taken based solely on a single Less Than Acceptable on-site review/examination assessment. SBA has considered these comments. The Less Than Acceptable Risk Ratings or on-site review/examination assessments reflect the particular facts and circumstances of individual cases. Sometimes the risk can be addressed solely through Lender corrective actions; sometimes other action must be taken. SBA must have the flexibility to take actions appropriate to the particular risk evidenced by Less Than Acceptable Risk Ratings and/or on-site review/assessments. Therefore, SBA is reluctant to set a specific number of low risk ratings or Less Than Acceptable on-site assessments to trigger enforcement action. However, as noted above, SBA does not anticipate using the Risk Rating System as the sole basis for taking enforcement actions against SBA Lenders, and has modified § 120.1400(c)(4) accordingly.

These same commenters also opposed the use of ''repeated Less Than Acceptable Risk Ratings'' as a possible enforcement ground in § 120.1400(c)(9). SBA has considered these comments, and § 120.1400(c)(9) has also been modified to conform to the change in § 120.1400(c)(4).

Finally, SBA received approximately 90 comments on proposed § 120.1400(c)(6), which gives SBA authority to take possible enforcement action if it determines that a Lender is ''engaging in a pattern of uncooperative behavior'' or taking an action that is ''detrimental to an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct.'' This language was based on current language in the CDC regulations. Commenters stated that this provision is overly broad, and requested that SBA give examples of the types of behavior that might trigger an enforcement action under this provision. One commenter also requested that, prior to taking enforcement action against a Lender, SBA provide notice to the Lender explaining why the Lender's actions were uncooperative, detrimental to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct prior to enforcement. In response, SBA is providing examples of the types of behavior that may trigger this provision. Those behaviors include, but are not limited to, refusal to implement actions to correct material weaknesses found in on-site reviews/assessments, and failure to carry out an approved plan to correct material weaknesses identified in an on-site review/assessment before a new on-site review/assessment is conducted. As for the additional notice, SBA has added language to the interim final rule providing such notice prior to enforcement.

Section 120.1400(d)(5)—Grounds for enforcement actions—Grounds required for certain enforcement actions against SBA Supervised Lenders (except Other Regulated SBLCs) or, as applicable, Other Persons—For transfer of loan portfolio. SBA has made a clarification to § 120.1400(d)(5)(i) consistent with statutory authority. 15 U.S.C. 650(i). Specifically, we revised the ''and'' in subparagraph ''i'' to read as an ''or''.

Section 120.1425(c)(2)—Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs—Grounds in general. Section 120.1425(c)(2)(viii) has been modified to conform with the changes in § 120.1400(c)(4) and (9) and reflect that SBA does not anticipate using the Risk Rating System as the sole basis for taking enforcement actions against Intermediaries or NTAPs.

Section 120.1500(a)(1)—Portfolio Guaranty Dollar Limit. SBA received several comments requesting clarification of § 120.1500(a)(1), SBA's proposed portfolio guaranty dollar limit enforcement action. The commenters requested that SBA clarify whether the guaranty limit applies to the total dollars of SBA loans or debentures guaranteed for an SBA Lender, or whether it restricts the maximum dollar amount on individual loans or debentures a Lender may make. SBA intended § 120.1500(a)(1) to apply only to the total dollars of SBA loans or debentures guaranteed for an SBA Lender. SBA is adopting § 120.1500(a)(1) as proposed.

Section 120.1500(a)(3)—Continuing Guaranty. Approximately 80 commenters supported § 120.1500(a)(3), which provides that the suspension or revocation of a Lender from an SBA program will not invalidate a guaranty previously provided by SBA. These commenters further recommended that this provision be moved to the introductory paragraph to § 120.1500, so as to apply to all enforcement actions, not just non-immediate suspensions or revocation. SBA has considered these comments, and agrees that the provisions should apply to all enforcement actions. We have therefore moved the provision to the beginning of the text, and clarified that an enforcement action, by itself, would not invalidate a guaranty previously provided by SBA.

Section 120.1500(b)—Secondary Market Suspension. SBA received approximately 90 comments opposing secondary market suspension as an available enforcement action. As stated in the proposed rule preamble, SBA is including this enforcement provision as a means of limiting an SBA Lender's risk exposure to SBA and the Secondary Market. Commenters contended that many Lenders are reliant on access to the Secondary Market in order to continue their 7(a) lending activities, and that such a suspension or revocation ''is tantamount to a program suspension or termination.'' Many commenters also questioned the need for SBA to provide additional protection to the Secondary Market, because ''purchasers in the Secondary Market conduct extensive due diligence.'' Finally, numerous commenters questioned SBA's need to protect itself from an SBA Lender's risk exposure, noting that the Agency has ''very little risk of loss'' because Lenders are ultimately responsible for their loans if SBA determines the need to repair or deny liability.

SBA has considered these comments, and recognizes that suspension or revocation of authority to sell or purchase loans or certificates in the Secondary Market could have very serious implications for certain 7(a) Lenders. Nonetheless, SBA has a responsibility to protect the integrity of the Secondary Market, whose operation is contingent upon SBA's full faith and

credit guaranty. SBA must also mitigate the risk to the Agency. SBA disagrees with the contention that the Agency has little risk of loss due to the Lender's responsibility to SBA in the case of a repair or denial of liability. If SBA has previously honored its guaranty to a holder in the Secondary Market, SBA is subject to risk that it will not be able to recoup funds from the SBA Lender, particularly if the SBA Lender is insolvent. Furthermore, for some SBA Lenders, Secondary Market Suspension may be preferable as an alternative to suspension or revocation of the SBA Lender's authority to participate in the SBA program. Therefore, § 120.1500(b) is adopted in the interim final rule as proposed.

Section 120.1600 (a)(3)—Enforcement Procedures—SBA Timeframes. Approximately 90 commenters requested that SBA give a definitive time period for rendering a decision in enforcement actions in order to allow the affected Lender to plan its SBA operations with some degree of certainty. The majority of these commenters recommended that SBA adopt a 60-day response time. Commenters also requested that SBA adopt an Agency response deadline of 30 days instead of the 90-day deadline proposed by SBA on immediate suspensions.

SBA recognizes the need for SBA Lenders, Intermediaries, and NTAPs (non-lending technical assistance providers) to plan their future SBA operations with certainty. SBA also recognizes the need for the Agency to provide an expeditious response, particularly when an immediate suspension has been put into effect. But SBA must balance this against the time needed to make the appropriate decision. SBA will make every effort to issue final enforcement decisions as quickly as possible and has decided to adopt a 30-day deadline (unless SBA provides notice that it requires additional time) for the final decision in the case of an immediate suspension and a 90-day deadline (unless SBA provides notice that it requires additional time) for final decisions for all other enforcement actions. We note that consideration of additional information (e.g., information provided by the Lender subsequent to objection) may extend the deadline accordingly.

Section 120.1600(a)(5)—Enforcement Procedures—Administrative Appeals Process for SBA Lenders, Intermediaries, and NTAPs. In general, proposed § 120.1600(a)(5) provided SBA Lenders, Intermediaries, and NTAPs streamlined enforcement appeal rights direct to Federal district court rather than requiring that Lenders first go through SBA's administrative appeals process. Many commenters requested that SBA incorporate an administrative appeals process within SBA's enforcement procedures framework citing cost concerns.

SBA has considered these comments and considered the possibility of incorporating an administrative appeals process for enforcement decisions, including to the Office of Hearings and Appeals (OHA). However, SBA has concluded that a direct appeal to Federal district court will, on balance, be a more efficient and cost-effective process for Lenders to utilize. For example, Lenders would be able to seek immediate injunctive relief from the Federal district courts, whereas OHA does not have the authority to issue injunctive relief. The Lender could lose valuable time and incur greater expense if it had to pursue its appeal through OHA before it could seek injunctive relief from the Federal courts. In reaching its conclusion, SBA has also considered the fact that SBA's enforcement decision will have been based on multiple levels of administrative review, including in most cases the independent Lender Oversight Committee. In addition, the extensive due process provisions of Section 1600 include notice and an opportunity to object.

Section 120.1600(b)—Enforcement Procedures—Administrative Appeals Process for SBA Supervised Lenders, Management Officials and Other Persons. SBA has made technical changes to § 120.1600(b)(1)(i) and (b)(3)(i) to clarify that administrative hearings under these subparagraphs, which are specifically required by the Small Business Act, will be conducted by SBA's Office of Hearings and Appeals in accordance with 15 U.S.C. 650 and applicable sections of Part 134 of SBA regulations.

III. Chart of Regulations Relocated

Some of the regulations promulgated in this interim final rule were relocated from other sections within Part 120. In some instances, the relocation involves simply moving text from one regulatory section to another. In other instances, SBA is proposing substantive changes with the move. See below chart of regulations relocated.

CHART OF REGULATIONS RELOCATED

Current regulatory citation	Regulation subject matter	Proposed regulatory citation
§ 120.414	SBA access to 7(a) Lender files	§ 120.1010.
§ 120.415	7(a) program—Suspension or revocation of eligibility to participate.	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.442	Suspension or revocation of CLP status	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.454	PLP performance review	§ 120.1000(a) (Risk-Based Lender Oversight). § 120.1025 (off-site reviews/monitoring). § 120.1050 (on-site reviews and examinations).
§ 120.455	Suspensions or revocations of PLP status	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.470(b)(3)	Minimum SBLC capital requirement	§ 120.471 (minimum capital requirement). § 120.472 (higher individual minimum capital requirement). § 120.473 (procedures for higher individual minimum capital requirement).
§ 120.470(b)(4)	SBLC capital impairment	§ 120.462(d).
§ 120.470(b)(5)	SBLC issuance of securities	§ 120.471(d).
§ 120.470(b)(6)	SBLC voluntary capital reduction	§ 120.471(c).
§ 120.470(b)(7)	SBLC reserve for losses	§ 120.463(e).

CHART OF REGULATIONS RELOCATED—Continued

Current regulatory citation	Regulation subject matter	Proposed regulatory citation
§ 120.470(b)(8)	SBLC internal controls	§ 120.460(b).
§ 120.470(b)(9)	SBLC dual control	§ 120.470(d).
§ 120.470(b)(10)	SBLC fidelity insurance	§ 120.470(e).
§ 120.470(b)(11)	SBLC common control	§ 120.470(f).
§ 120.470(b)(12)	SBLC management	§ 120.470(g).
§ 120.470(b)(13)	SBLC borrowed funds	§ 120.470(h).
§ 120.471	SBLC recordkeeping and retention requirements	§ 120.461.
§ 120.473	SBLC change of control	§ 120.475.
§ 120.474	SBLC prohibited financing	§ 120.476.
§ 120.475	SBLC Audits	§ 120.490.
§ 120.476	SBLC suspension and revocation	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.716	Microloan Intermediary and NTAP suspension and revocation.	§ 120.1425 (grounds). § 120.1540 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.853	CDC reviews	§ 120.1000, 120.1050.
§ 120.854	CDC grounds for taking enforcement action	§ 120.1400 (grounds).
§ 120.855	CDC types of enforcement actions	§ 120.1500 (types of enforcement actions).
§ 120.856	CDC enforcement procedures	§ 120.1600 (enforcement procedures).

IV. Justification for Interim Final Rule

SBA finds that good cause exists to publish this rule as an interim final rule. As discussed above, SBA previously published a Notice of Proposed Rulemaking (NPRM) addressing all of the topics and issues covered by this interim final rule. SBA has already allowed for public comment, reviewed the comments and made changes accordingly. SBA has determined that the changes made in this rule are a logical outgrowth of the proposed rule and the comments received on the proposed rule. Procedurally, SBA could therefore issue a final rule; however, SBA is publishing this rule interim final rather than proceeding to a final rule in order to provide the public with an additional opportunity to comment.

SBA has a statutory obligation to implement a Lender Oversight Program and it is critically important during the current financial crisis that a proper oversight program is in place. Any delay in promulgation could be prejudicial to the integrity of the program and could potentially result in additional losses to the American taxpayers. SBA is requesting additional public comments in order to further shape the program. Publishing this rule as interim final allows for any needed adjustments as the industry moves through the economic cycle.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the **DATES** section of this interim final rule. SBA may then consider these comments in making any necessary revisions to these regulations.

Compliance with Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35) Executive Order 12866: The Office of Management and Budget has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866 thus requiring a Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Proposal

This rule incorporates SBA's risk-based lender oversight program into SBA regulations. Specifically, the rule codifies in 13 CFR SBA's process of risk-based oversight including: (i) Accounting and reporting requirements; (ii) off-site reviews/monitoring; (iii) on-site reviews and examinations; and (iv) capital adequacy requirements. The rule also consolidates and lists the types of, grounds for, and procedures governing SBA enforcement actions within Subpart I. This rule is a necessary first step to provide coordinated and effective oversight of financial institutions that originate and manage SBA guaranteed loans.

These regulatory changes will improve SBA's oversight and management of the 7(a), 504, Microloan and NTAP programs. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on the SBA or the public.

B. Baseline Costs

1. Baseline Costs for 7(a) Lenders (Excluding SBA Supervised Lenders)

All 7(a) Lenders, excluding SBA Supervised Lenders, are currently required to be supervised and examined by a state or Federal regulatory authority, satisfactory to SBA. This is a cost already borne by these 7(a) Lenders. In addition, these 7(a) Lenders are subject to SBA's supervisory and enforcement provisions contained in the business programs portion of Part 120.

The estimated annual baseline costs to the Federal government for 7(a) Lenders' oversight is provided for in the existing OCRM infrastructure.

2. Baseline Costs for SBLCs

Each SBLC is currently required to submit audited financial statements within three months after the close of each fiscal year and interim financial reporting when requested by SBA. SBA also currently requires that SBLCs submit a report on any legal or administrative proceeding, by or against the SBLC, or against an officer, director or employee of the SBLC for an alleged breach of official duty; copies of any report furnished to its stockholders; a summary of any changes in the SBLC's organization or financing; notice of capital impairment; and such other reports as SBA may require from time to time by written directive. The collection of the information and reports referenced here is largely already maintained by the SBLCs for operational and financing purposes. It is estimated that preparation and submission of this information takes about 80 hours annually for each SBLC. The hour

burden is an SBA estimate based on inquiries made to selected SBLCs. The estimate of the total annual cost burden is based on an average annual outside audit fee of $8,000 per respondent, plus an additional $2,000 per respondent for staff involvement in the independent audit engagement and SBA reporting (approximately 15 hours of CFO time at a $100 hourly rate plus 15 hours of administrative profession time at a $30 hourly rate, rounded). This total cost burden is estimated at $140,000 for 14 SBLCs. SBA has reduced this figure by $20,000 to $120,000 to adjust for reduced costs for smaller SBLCs. The estimated annual cost to the Federal government for this information collection is approximately 8 hours of Financial Analyst time at $55 per hour, or $6,160 annually for all 14 SBLCs. Any additional estimated indirect annual cost to the Federal government for oversight of these SBLCs is provided for in the existing OCRM infrastructure. During the comment period, one comment was received questioning whether the Baseline Costs for SBLCs were estimated too low. However, no information was provided regarding which specific component(s) of the estimate were of concern. SBA considers the information it received directly from selected SBLCs during development of the rule to be most applicable; therefore, the SBLC baseline costs estimate remains unchanged from the proposed rule.

3. Baseline Costs for NFRLs

No direct costs are currently incurred by NFRLs for SBA oversight and related functions discussed in this rule. The estimated annual cost to the Federal government for oversight of these NFRLs is provided for in the existing OCRM infrastructure.

4. Baseline Costs for CDCs

Each CDC is currently required to submit to SBA an annual report within 180 days of the fiscal year end, including financial statements of the CDC and any affiliates or subsidiaries and such interim reports as SBA may require. The collection of the information and reports referenced here is largely already maintained by the CDCs for operational purposes. SBA has estimated that preparation and submission of this information takes approximately 28 hours annually for each CDC, at an average cost of $30 per hour for staff compilation, which computes to a cost of $840 per CDC, and a total of 7,560 hours for all CDCs. This total cost burden is $226,800 (7,560 hours × $30) for the approximately 270 CDCs. The estimated annual cost to the Federal government for this information collection is approximately 1 hour of financial analyst time per CDC or 270 hours total for all CDCs, at a cost of $55 per hour. Estimated annual Federal cost burden therefore is estimated at $14,850 (270 hours × $55). The remaining estimated annual cost to the Federal government for oversight of CDCs is provided for in the existing OCRM infrastructure.

5. Baseline Costs for Microloan Intermediaries and NTAPs

Microloan Intermediaries and NTAPs currently incur no direct costs for oversight and related functions as discussed in this rule. The estimated annual cost to the Federal government for oversight of these Microloan Intermediaries and NTAPs is currently provided for in the existing OFA infrastructure.

C. Benefits and Costs of the Rule

1. Benefits and Costs of the Proposed Rule to all SBA Lenders, Microloan Intermediaries and NTAPs

The rule benefits SBA Lenders, Microloan Intermediaries, and NTAPs by generally consolidating oversight authority and responsibility within one SBA office, OCRM. These institutions also benefit from knowledge of established and further defined programmatic standards, enforcement grounds, ranges of enforcement actions and procedures for supervision and enforcement actions as set forth in the rule. They further benefit from performance feedback to the extent it assists them in improving their SBA operations and minimizing losses.

While there are specific benefit and costs issues for specific categories of Lenders as detailed below, all SBA Lenders, Microloan Intermediaries and NTAPS will incur some relatively minimal costs related to the rule's incorporation of review/exam reporting (e.g., self-assessments and related reporting, corrective action plans). Self-assessments and review/exam reporting are a timely and cost effective means of overseeing and monitoring the SBA performance and compliance of SBA Lenders, Microloan Intermediaries and NTAPs.

2. Benefits and Costs of the Rule to 7(a) Lenders (Other Than SBLCs and NFRLs)

No additional direct costs will be incurred by 7(a) Lenders for oversight as contained in the rule. No additional reporting or direct costs will be incurred by 7(a) Lenders with the rule's implementation.

SBA received approximately 90 comments requesting that SBA include cost estimates of appealing proposed enforcement actions to a Federal district court rather than SBA's Office of Hearings and Appeals (OHA). The Agency does not currently have data that would enable it to provide a reasonably accurate estimate of Lenders' costs for appealing such actions through the judicial process. SBA is also unable to extrapolate from data on the costs of appealing to OHA because although that process is currently available, the process has been used rather infrequently and any such extrapolation would be unreliable. SBA is willing to consider comments from Lenders that would enable the agency to obtain the relevant costs data.

SBA also received one request for estimates of the costs that could be incurred in connection with possible enforcement actions included in § 120.1500 of the interim final rule. SBA is unable to estimate the cost of appealing or responding to potential enforcement actions SBA might take, because the type of enforcement action and steps necessary to correct a deficiency will vary based on the specific deficiency and characteristics and situation of the particular Lender. SBA is willing to consider comments from Lenders that would enable the agency to obtain the relevant costs data.

3. Benefits and Costs of the Rule to SBLCs

The rule provides for more developed internal control requirements and adoption of a formal capital plan. It requires filing of (i) quarterly condition reports (including financial statements); (ii) reports of changes in financial condition; (iii) notice of change of auditor; (iv) capital restoration plans; and (v) Other Regulated SBLC Reports, with certifications as to accuracy or compliance (including capital compliance) as applicable. Because internal controls, formal capital plans, and quarterly financial statements are likely already maintained by the SBLCs for operational purposes, there is little or no additional cost for these new requirements. Preparation and submission of all the additional reports and the new recordkeeping takes approximately 3 hours annually of additional CFO time at a $100 hourly cost, plus 3 hours annually of additional administrative professional time at a $30 hourly cost. Therefore, the total additional cost burden is $5,460 ($390 × 14) for 14 SBLCs.

4. Benefits and Costs of the Rule to NFRLs

The rule requires each NFRL to submit an annual report, including

audited financial statements within three months after the close of each fiscal year. The rule further requires that all audited financial report filings are prepared in accordance with Generally Accepted Accounting Principles (GAAP), and include an opinion from the independent accounting firm engaged in the audit. It also requires NFRLs to submit: (i) A report on any legal or administrative proceeding, by or against the NFRL, or against an officer, director or employee of the NFRL for an alleged breach of official duty; (ii) copies of any report/publications furnished to its stockholders; (iii) summaries of changes in the NFRL's organization or financial structure, personnel and eligibility; (iv) notice of capital impairment; (v) quarterly condition reports; (vi) changes in financial condition reports; (vii) recapitalization plans; and (viii) notice of changes in auditors and such other reports as SBA may require from time to time by written directive—with certifications as to accuracy and compliance (including capital compliance), as applicable. The rule requires adoption of a developed internal control policy, records maintenance, and adoption of a formal capital plan. Much of the collection of the information and reports referenced here, as well as the requirements for internal control, records retention and adoption of a formal capital plan are information likely already maintained by the NFRLs for operational, and in some instances financing, purposes. Preparation and submission costs are consistent with that of the baseline for the SBLCs, at 80 hours of external auditor time at $100 hourly rate, plus an additional $2,000 per NFRL for staff involvement in the independent audit engagement (approximately 15 hours of CFO time at a $100 hourly rate plus 15 hours of administrative profession time at a $30 hourly rate, rounded) for a total of $10,000 per NFRL. Additional reporting and recordkeeping requirements to the NFRLs (that which would be new to SBLCs as well) are at 3 hours of additional CFO time at a $100 hourly rate plus 3 hours of additional administrative professional time at a $30 hourly rate ($390 per NFRL). Since there are no current baseline costs to NFRLs, the total additional cost burden for this rule for the 58 NFRLs is $602,620 ($10,390 × 58 NFRLs).

5. Benefits and Costs of the Rule to CDCs

Approximately 70 commenters requested that SBA include an estimate for the cost of CDCs' compliance with the Single Audit Act requirements. SBA and OMB have determined that the Single Audit Act does not apply to SBA's 504 program; therefore, cost estimates of Single Audit Act compliance are unnecessary.

SBA also received several comments from CDCs requesting estimates of the costs of implementing the internal control requirements contained in § 120.826(b). Because most CDCs likely already maintain internal controls for operational purposes, and because the interim final rule allows for flexibility in the internal control structure of CDCs with varying size and sophistication, SBA estimates little or no additional cost for the requirements.

SBA did not adopt the proposed 90-day annual report filing deadline or the proposed requirement that all CDCs obtain audited financial statements in the interim final rule; therefore, the rule does not implement any significant changes to CDC operations or management. Thus, there are no additional costs of the rule and no substantive alteration of Baseline Costs for CDCs outlined in paragraph 4 of section B.

6. Benefits and Costs of the Rule to Microloan Intermediaries and NTAPs

No additional direct costs are incurred by Microloan Intermediaries and NTAPs for lender oversight and related functions in this rule, because no additional reporting is required. Furthermore, general oversight, suspension and revocation already existed in former § 120.716 and remains the same when relocated within subpart I, and no additional reporting is required by this rule.

7. Benefits and Costs for SBA and the Federal Government

Benefits to SBA include improved administration of the lender oversight process through general consolidation of oversight authority within OCRM. SBA also benefits from having more timely and complete operations information, including financial information for SBA Supervised Lenders. In addition, the Agency benefits from further consolidated standards, enforcement grounds, ranges of enforcement actions and procedures for supervision and enforcement actions for many SBA Lenders, Microloan Intermediaries and NTAPs. Finally, the rule's additional requirements and lender oversight provisions provide improved and more timely Lender monitoring to ultimately further minimize the risks of losses in SBA's loan programs.

For 7(a) Lender specific sections, no additional reporting from these Lenders is required by the rule, and therefore no additional direct costs for assessment of any such reporting are incurred by SBA for provisions related to oversight functions in this proposed rule.

For SBLCs, the rule requires an additional 3 hours financial analyst time at a $55 hourly rate to the Federal government for each SBLC or 42 hours overall (3 × 14 SBLCs) for an additional annual cost of $2,310 to the Federal government.

For NFRLs, the rule requires an additional 8 hours financial analyst time at a $55 hourly rate. Therefore, estimated annual cost to the Federal government related to oversight of all 58 NFRLs in accordance with this rule is 464 hours for $25,520.

For CDCs, baseline costs remain unchanged for the Federal government. Baseline costs remain $14,850 (1 hr per CDC).

For Microloan Intermediaries and NTAPs, no additional direct costs to SBA are incurred for the lender oversight functions and related provisions in this rule.

Any additional indirect costs to the Federal government for oversight of the SBA Lenders, Microloan Intermediaries, and NTAPs under this rule are covered by the already-existing OCRM infra-structure.

8. Cost Basis

For purposes of this rule, CPA and CFO salary rates used are based on information published by the AICPA for CPA-credentialed individuals (external auditor or internal CFO) estimated at $100. The salary rates for administrative professionals are based on information published by the International Association of Administrative Professionals. Internal SBA financial analyst time is estimated at GS–14 step 5 level of $99,203 plus 24.8% benefits allocation, or approximately $55 per hour.

D. Alternatives

SBA believes that this rule is SBA's best available means for achieving its regulatory objective of incorporating coordinated risk-based supervision and enforcement into SBA regulations and implementing the provisions of Public Law 108–447 and SBA's Delegation of Authority for lender oversight. SBA believes that there are no other potentially effective and reasonably feasible alternatives to this rule as it applies to SBA Lenders, Microloan Intermediaries, and NTAPs.

Executive Order 13132: For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12988: For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or pre-emptive effect.

Regulatory Flexibility Act: This rule directly affects all SBA Lenders, Microloan Intermediaries, and NTAPs. There are approximately 4,500 7(a) Lenders, 270 CDCs, 250 Microloan Intermediaries, and there were 11 NTAPs participating with SBA funding when NTAPs were last funded. SBA has determined that CDCs, Microloan Intermediaries, and the 14 SBLCs fall under the size standard for NAICS 522298, All Other Nondepository Credit Intermediation. The size standard for NAICS 522298 is $7 million or less in average annual receipts. There are approximately 58 NFRLs, most of which fall in NAICS 522298 (the rest fall into NAICS 522110, Commercial Banking). The remaining 7(a) Lenders fall under the size standard for NAICS 522110, Commercial Banking. The size standard for NAICS 522110 is assets of $175 million or less. The NTAPs fall under the size standard for NAICS 541990, All Other Professional, Scientific and Technical Services. The size standard for NAICS 541990 is $7 million or less in average annual receipts.

SBA estimates that over 95 percent of the CDCs and Microloan Intermediaries do not exceed the applicable size standard and are, therefore, considered small entities by this definition. Approximately half of all of the 7(a) Lenders exceed the small business size standard set for NAICS 522110. Thus, SBA has determined that this rule will have an impact on a substantial number of small entities. However, for the reasons explained following, SBA does not believe that the rule will have a significant economic impact on those entities.

The rule contains several different sections. For clarity, SBA has analyzed the economic impact by section, as follows:

A. Proposed Reporting Requirements for SBA Supervised Lenders and CDCs: There are 14 SBLCs and approximately 58 NFRLs that are authorized to make 7(a) loans. The majority of the NFRLs are nondepository commercial Lenders. Most of the NFRLs are classified under NAICS 522298, which has a small business size standard of $7 million or less in annual revenues. The remaining NFRLs are classified under NAICS 522110, Commercial Banking, which has a small business size standard of $175 million or less in assets.

Current regulations require SBLCs to submit their audited financial statements to SBA within three months after the close of their fiscal year. Financial statement submission allows SBA to perform a size determination on SBLCs with a reasonable degree of accuracy. Based on submitted financial statements, of the twelve active SBLCs, four exceed the small business size standard for NAICS 522298.

Presently, there is no requirement that NFRLs submit financial statements to SBA. Therefore, SBA does not have the information to determine current average annual receipts. To estimate the size of the NFRLs, SBA reviewed a sample of the financial statements that NFRLs had submitted to SBA when they first applied for authorization to make 7(a) loans. Based on a review of those financial statements, we estimate that two-thirds of the NFRLs are small. Based on the financial data in the NFRL applications and up-to-date financial data supplied by SBLCs to SBA, SBA believes that the rule impacts a substantial number of these small entities, but does not constitute a significant economic impact, as detailed below.

The rule, which defines ''SBA Supervised Lenders'' as NFRLs and SBLCs, requires these Lenders to provide SBA with the following information: (1) Annual audited financial statements, (2) quarterly condition reports, (3) copies of any legal and administrative proceedings by or against the SBA Supervised Lender, (4) copies of any report furnished to its stockholders, (5) reports of changes in the SBA Supervised Lender's organization or financing, (6) reports of changes in the SBA Supervised Lender's financial condition, (7) notice of change in auditors, (8) notice of capital impairment, (9) capital restoration plans, (10) Other Regulated SBLC reports, (11) other reports (that SBA may require from time to time) and (12) certifications of compliance with capital requirement. Several of these are already required of SBLCs. The rule also provides for record retention requirements and recordkeeping of a capital adequacy plan.

As is mentioned above, SBLCs are already required to submit audited annual financial statements to SBA. It has been SBA's experience that SBLCs and NFRLs also prepare quarterly financial statements on a regular basis for their own internal management purposes, and SBA believes that most of the NFRLs also prepare audited annual financial statements for their internal management purposes. The rule requires both NFRLs and SBLCs to provide the SBA with copies of their financial statements on a quarterly basis and expands the requirement for annual audited financial statements submitted to SBA to include NFRLs. Existing regulations also require SBLCs to maintain compliance with SBA capital requirements. The rule expands the number of firms subject to SBA's capital regulation by making NFRLs subject to certain capital regulations. The rule also requires SBA Supervised Lenders to provide SBA with a quarterly certification that they are in compliance with the SBA capital requirement. A certificate of compliance with SBA capital regulations would normally be prepared by a financial institution's chief financial officer or someone from his or her staff under the rule. SBA believes that it would take no more than one hour per quarter to prepare and certify. The certification could accompany quarterly condition reporting. In accordance with the American Institute of Public Accountants published surveys, the salary and benefits rate for a CPA-credentialed individual is estimated at $100 per hour. This computes to an estimated annual cost of $400 to cover the CFO's time. SBA has estimated that the administrative staff work involved in preparing the submission materials would take no more than one hour for those quarters not covered by the Annual Report. According to a recent survey published by the International Association of Administrative Professionals, the salary estimate is $30 per hour. This calculates to an annual expense of $120 per year. The combined annual expense that SBA Supervised Lenders would incur in order to comply with this reporting is on average $520 ($400 + $120). SBA does not believe that an additional $520 cost annually constitutes significant economic impact on any of these firms, which can routinely engage in financings in the million dollar range. Therefore, SBA certifies that this aspect of the rule does not have a significant economic impact on a substantial number of small entities.

Current regulations require that SBLCs submit copies of the following to SBA: (1) Any legal and administrative proceedings by or against them, (2) any reports it furnishes to its stockholders, (3) summaries of changes in the SBLCs organization and financing, (4) notice of capital impairment, and (5) such other reports it is required by SBA to furnish on a specific matter. The rule extends to NFRLs these ad hoc reporting

requirements. SBA believes this data is likely already collected and that similar documents are already prepared by the NFRLs. The rule only requires the NFRLs to submit the documents to SBA. Because these are documents that are likely already in the possession of the NFRLs, SBA does not believe that the NFRLs would incur any significant costs to comply with the rule. SBA, therefore, certifies that this aspect of the rule does not have a significant economic impact on a substantial number of small entities.

The new reporting and recordkeeping requirements in the rule for SBA Supervised Lenders that have not yet been discussed occur on an ad hoc basis (e.g., change in financial condition). They generally would be triggered by exceptional circumstances. Thus given their ad hoc and exceptional nature, they do not have a significant economic impact on a substantial number of small entities.

The rule does not require any new financial or other reporting from CDCs. SBA certifies that this aspect of the rule does not have a significant economic impact on a substantial number of small entities.

B. Capital Adequacy: Only SBLCs are presently subject to the minimum capital requirements currently found in 13 CFR 120.470. The rule requires quarterly compliance by SBLCs with their respective minimum capital requirements. It also requires that NFRLs provide the SBA with a quarterly certification that they are in compliance with their state regulator's minimum capital requirement. In addition, the rule broadens the existing definition of capital, making it more consistent with that of other Federal Financial Institution Regulators, by allowing SBA Supervised Lenders to count retained earnings towards their regulatory capital requirement. SBA asserts that broadening the types of capital that are eligible towards the SBA capital requirements has no adverse financial impact on small Lenders. In fact, allowing retained earnings to count toward an SBA Supervised Lender's regulatory capital allows those SBLCs with significant retained earnings on their balance sheet to increase the size of their 7(a) portfolio without necessitating any additional injection of permanent capital. SBA, therefore, certifies that this aspect of the rule does not have a significant economic impact on a substantial number of small entities.

C. Enforcement Provisions: The rule consolidates and lists the types of, grounds for, and procedures governing SBA enforcement actions within consolidated enforcement regulations for all SBA Lenders, Microloan Intermediaries, and NTAPs. The enforcement provisions specific to SBA Supervised Lender specific and SBLC specific actions follow recent legislation codified at 15 U.S.C. 650 *et seq.* Because SBA anticipates that enforcement actions would occur on an exception basis, SBA does not anticipate that these provisions will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. SBA, therefore, certifies that the rule does not have a significant impact on a substantial number of small entities.

D. Bureau of PCLP Oversight: The Bureau of PCLP Oversight has been established in accordance with statutory guidance to address the LLRFs of Premier Certified Lenders (PCLP CDCs). Of the approximately 270 CDCs, approximately 25 of them have PCLP authority. These are generally the larger CDCs, with portfolios which have a total outstanding portfolio balance of $7.9 billion. SBA, therefore, certifies that the rule's Bureau of PCLP Oversight provision does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act: SBA has determined that this rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Specifically, SBA is revising OMB approved information collection number 3245–0077 to include NFRLs in SBA's current reporting requirements for SBLCs. SBA is also revising 3245–0077 to add four reporting requirements for all SBA Supervised Lenders and one reporting requirement just for SBLCs. Finally, the rule adds a review/examination reporting requirement.

SBA received several comments from the public on the information collections added by this rule, including several on the costs of complying with the new or expanded reporting requirements. SBA's responses to these comments are discussed in detail in the comment section of the preamble, and in the Executive Order 12866 regulatory impact analysis section. As a result of comments received, SBA has modified the proposed reporting requirements. Specifically, SBA will not require all CDCs to submit annual audited financial statements; rather, this requirement will continue to apply to only those CDCs with a loan portfolio balance of $20 million or more. All other proposed collections of information are adopted as proposed and have been submitted to OMB for final review and approval. The titles, authority, descriptions of respondents, descriptions of each information collection, needs and purposes for the collections, and the estimated annual cost and hour burdens imposed on Lenders as a result of these collections are outlined below.

I. SBA Supervised Lender Reporting and Recordkeeping Requirements

OMB approved information collection number 3245–0077, Reports to SBA: Provisions of 13 CFR 120, is revised to include these additional reporting and recordkeeping requirements for SBA Supervised Lenders.

Authority: SBA is authorized pursuant to 15 U.S.C. 650(a) and 15 U.S.C. 634(b)(7) to collect this information associated with examining the safety and soundness of SBA Supervised Lenders.

Description of Respondents: The respondents consist of all SBA Supervised Lenders. Currently there are approximately 75 such Lenders—(14 SBLCs and 58 NFRLs).

Statement of Needs and Purposes: The reports and recordkeeping requirements facilitate safety and soundness examinations and appropriate supervision of SBA's licensed SBLCs and NFRLs. Annual and interim financial information is analyzed by program management to timely assess SBA Supervised Lenders' financial strength, as well as compliance, with relevant program regulations (e.g., capital and SBLC licensing regulations). Other reporting requirements update program management on the operational status of the SBA Supervised Lender and timely notify SBA of (i) changes in structure, personnel, auditors, and financial condition and (ii) potential financial exposure. Informed, SBA as supervisor and guarantor of 50 to 85% of an SBA Supervised Lender's portfolio, can intervene (where appropriate) to protect the interests of the United States.

Estimated Cost to Respondents: SBA estimated a cost of $10,340 per SBA Supervised Lender (or approximately $744,480 for all SBA Supervised Lenders) to comply with the below listed information collections. The $10,340 per SBA Supervised Lender includes $8,000 for the annual report audit (80 hours × $100 per hour) plus $2,340 for staff time to support the information collections (approximately 18 hours CFO time @ $100 per hour and 18 hours staff time @ $30 per hour). The hourly estimates are based on an informal survey of SBA Supervised Lenders. While a few of the information collections, like the annual and quarterly condition reports are required,

most are ad hoc and occur on an exception basis. The hourly costs are derived from salary and benefit rate surveys of the AICPA and International Association of Administrative Professionals. This $624,480 increase from the current OMB approved collection is mainly attributable to the extension of the information collection to the 58 NFRLs; SBA also believes that this number will be dramatically reduced to the extent that many or some of the NFRLs already maintain this information for other purposes.

Description of Reporting and Recordkeeping Requirements

A. Annual Audit Report [No SBA Form Number]

Summary: The Annual Audited Report primarily consists of an SBA Supervised Lender's annual audited financial statements. The Annual Report is due to SBA within three months after the SBA Supervised Lender's fiscal year end.

B. Legal and Administrative Proceedings [No SBA Form Number]

Summary: Under proposed § 120.464(a)(3), each SBA Supervised Lender submits a report of any legal or administrative proceeding, by or against the SBA Supervised Lender, or against any officer, director or employee of the SBA Supervised Lender for an alleged breach of official duty.

C. Stockholder Report [No SBA Form Number]

Summary: Under § 120.464(a)(4), all SBA Supervised Lenders are required to submit to SBA copies of any report or publications concerning financial operations furnished to their stockholders.

D. Report of Changes [No SBA Form Number]

Summary: Under § 120.464(a)(5), all SBA Supervised Lenders are required to submit a copy of any changes in the SBA Supervised Lender's organization or financing (e.g., change in type of organization, acquisition by or change of parent, change in primary financing entity, etc.).

E. Notice of Capital Impairment [No SBA Form Number]

Summary: Section 120.462(d) requires all SBA Supervised Lenders to provide SBA prompt written notice of capital impairment.

F. Other Reports [No SBA Form Number]

Summary: Section 120.464(a)(7) requires all SBA Supervised Lenders to submit such other reports as SBA may from time to time require by written directive.

G. Quarterly Condition Report and Certifications [No SBA Form Number]

Summary: Under § 120.464(a)(2), all SBA Supervised Lenders are required to submit a Quarterly Condition Report to SBA within 45 days following the end of each calendar quarter. The content of the Quarterly Condition Report includes the SBA Supervised Lender's interim financial statements, which may be internally prepared. SBA Supervised Lenders are required to apply uniform definitions to categories of nonperforming loans and recovery amounts on liquidated loans within the reports. The Quarterly Condition Report also contains a certification by the SBA Supervised Lender as to compliance with laws, completeness, and accuracy and may contain the certification as to capital requirement compliance.

H. Changes in Financial Condition Report [No SBA Form Number]

Summary: Section 120.464(a)(6) requires SBA Supervised Lenders to file with SBA a report on any material change in financial condition within ten days after management becomes aware of the changes, except when reporting capital impairment under proposed § 120.462(d).

I. Notice of Change in Auditor [No SBA Form Number]

Summary: Section 120.463(d) requires SBA Supervised Lenders to notify SBA in writing if they discharge or change auditors.

J. Capital Restoration Plan [No SBA Form Number]

Summary: Section 120.462(e) requires an SBA Supervised Lender to file a written capital restoration plan with SBA generally within 45 days of the date the SBA Supervised Lender receives or is deemed to have received notice that it has not met its minimum capital requirement.

K. Other Regulated SBLC Report [No SBA Form Number]

Summary: Sections 120.1510 and 120.1511 require an SBLC that is directly examined by a Federal Financial Institution Regulator or State banking regulator to certify to SBA in writing the extent to which its lending activities are subject to such regulation. It also requires such an Other Regulated SBLC to report to SBA on its interactions with its Federal Financial Institution Regulator or State banking regulator to the extent allowed by law.

L. Records Retention, In General

Summary: Section 120.461(b) and (c) require SBA Supervised Lenders to maintain and preserve certain records with immediate availability of specific documents (e.g., general and subsidiary ledgers, general journals, bylaws, stock transfer ledgers). The provision provides for electronic preservation, if the original is available for retrieval within a reasonable period.

M. Capital Adequacy Plan

Summary: Section 120.462 requires SBA Supervised Lenders' Board of Directors to determine capital adequacy goals and to establish, adopt, and maintain a capital plan.

II. SBA Lender, Microloan Intermediary, and NTAP Reporting Requirements

These are new reporting and recordkeeping requirements.

A. Self-Assessment

Authority: SBA is authorized to collect self-assessment information under 15 U.S.C. 634(b)(7) and 15 U.S.C. 650.

Description of Respondents: The respondents are SBA Lenders, Microloan Intermediaries, and NTAPS.

Need and Purpose: Section 120.1025 of this rule provides that ''SBA may conduct off-site reviews and monitoring * * * including SBA Lenders', Intermediaries', or NTAPs' self-assessments.'' Generally, SBA will consider requiring a self-assessment to confirm corrective actions implemented or in lieu of targeted or limited scope reviews. Self-assessments are a cost effective means of overseeing and monitoring the SBA performance and compliance of SBA Lenders, Microloan Intermediaries, and NTAPs.

Estimated Cost to Respondents: SBA estimates a cost of $430 per SBA Lender, Microloan Intermediary, or NTAP or $8,600 for all those required during a year to submit a self-assessment certification or self-assessment report. SBA estimates requiring 20 self-assessments a year. This cost would consist of $30 for administrative staff to prepare the self-assessment certification or report (one hour × $30 hour) and $400 for CFO composition time (four hours × $100 per hour). The hourly estimates are based on an informal survey of SBA Lenders by OCRM financial analysts.

B. Corrective Action Plan

Authority: SBA is authorized to collect this information under 15 U.S.C. 634(b)(7) and 15 U.S.C. 650.

Description of Respondents: The respondents consist of SBA Lenders, Microloan Intermediaries, and NTAPs that receive an onsite review or examination assessment of Acceptable With Corrective Actions Required or Less Than Acceptable, or as otherwise required by SBA.

Need and Purpose: Section 120.1055 provides that SBA Lenders, Microloan Intermediaries, and NTAPs must submit proposed corrective action plans, if requested. The reports facilitate corrective action to address SBA Lender, Microloan Intermediary, or NTAP deficiencies identified generally during reviews and examinations.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e).

■ 2. Amend § 120.10 by adding new definitions ''Acceptable Risk Rating'', ''Federal Financial Institution Regulator'', ''Lender Oversight Committee'', ''Less Than Acceptable Risk Rating'', ''Management Official'', ''Non-Federally Regulated Lender'', ''Other Regulated SBLC'', ''Person'', ''Risk Rating'', ''SBA Lender'', ''SBA Supervised Lender'', and ''Small Business Lending Company'' in alphabetical order, and removing the definition for ''Lender'' and adding in its place a definition of ''*Lender or 7(a) Lender*'' to read as follows:

§ 120.10 Definitions.

* * * * *

Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as ''1'', ''2'' or ''3'' on a scale of 1 to 5, which represents an acceptable level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

Federal Financial Institution Regulator is the federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration.

* * * * *

Lender or 7(a) Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Lender Oversight Committee is a committee within SBA, with responsibilities as outlined in Delegations of Authority, as published in the **Federal Register**.

Less Than Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as ''4'' or ''5'' on a scale of 1 to 5, which represents a higher level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

Management Official is an officer, director, general partner, manager, employee participating in management, agent or other participant in the management of the affairs of the SBA Supervised Lender's activities under the 7(a) program.

Non-Federally Regulated Lender (NFRL) is a business concern that is authorized by the SBA to make loans under section 7(a) and is subject to regulation by a state but whose lending activities are not regulated by a Federal Financial Institution Regulator.

* * * * *

Other Regulated SBLC is a Small Business Lending Company whose SBA operations receive regular safety and soundness examinations by a state banking regulator or a Federal Financial Institution Regulator, and which meets the requirements set forth in § 120.1511.

Person is any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

* * * * *

Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders, Intermediaries, or NTAPs that reflects the risk associated with the SBA Lender's or Intermediary's portfolio of SBA loans or with the NTAP. Risk Ratings currently range from one to five, with one representing the least risk and five representing the most risk, and may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

SBA Lender is a 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

SBA Supervised Lender is a 7(a) Lender that is either a Small Business Lending Company or a NFRL.

* * * * *

Small Business Lending Company (SBLC) is a nondepository lending institution that is SBA licensed and is authorized by SBA to only make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBA has imposed a moratorium on licensing new SBLCs since January 1982.

* * * * *

■ 3. Amend § 120.410 by revising paragraphs (a), (d) and (e) and adding a new paragraph (f) to read as follows:

§ 120.410 Requirements for all participating Lenders.

* * * * *

(a) Have a continuing ability to evaluate, process, close, disburse, service, liquidate and litigate small business loans including, but not limited to:

(1) Holding sufficient permanent capital to support SBA lending activities (for SBA Lenders with a Federal Financial Institution Regulator, meeting capital requirements for an adequately capitalized financial institution is considered sufficient permanent capital to support SBA lending activities; for SBLCs, meeting its SBA minimum capital requirement; and for NFRLs, meeting its state minimum capital requirement); and

(2) Maintaining satisfactory SBA performance, as determined by SBA in its discretion. The 7(a) Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

(d) Be supervised and examined by either:

(1) A Federal Financial Institution Regulator,

(2) A state banking regulator satisfactory to SBA, or

(3) SBA;

(e) Be in good standing with SBA as defined in § 120.420(f) (and determined by SBA in its discretion) and, as applicable, with an SBA Lender's state regulator and Federal Financial Institution Regulator; and

(f) Operate in a safe and sound condition using commercially reasonable lending policies, procedures, and standards employed by prudent Lenders.

■ 4. Remove the undesignated center heading immediately preceding § 120.414.

§ 120.414 [Removed]

■ 5. Remove § 120.414.

§ 120.415 [Removed]

■ 6. Remove § 120.415.

■ 7. In § 120.420, revise paragraph (f) introductory text and paragraphs (f)(3) and (4) to read as follows:

§ 120.420 Definitions.

* * * * *

(f) Good Standing—In general, a Lender is in ''good standing'' with SBA if it:

* * * * *

(3) Is not under investigation or indictment for, or has not been convicted of, or had a judgment entered against it for felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good standing exists despite the existence of such factors.

(4) Does not have any officer or employee who has been under investigation or indictment for, or has been convicted of or had a judgment entered against him for, a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good standing exists despite the existence of such person.

* * * * *

■ 8. Amend § 120.424 by revising paragraph (a), redesignating paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), and adding new paragraph (b) to read as follows:

§ 120.424 What are the basic conditions a Lender must meet to securitize?

* * * * *

(a) Be in good standing with SBA as defined in § 120.420(f) of this chapter and determined by SBA in its discretion;

(b) Have satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

§ 120.425 [Amended]

■ 9. Amend § 120.425(c)(2) by removing ''SBA Securitization Committee'' and add in its place ''Lender Oversight Committee'' in the fourth sentence.

§ 120.426 [Amended]

■ 10. Amend § 120.426 by removing ''SBA's Securitization Committee'' and add in its place ''Lender Oversight Committee'' in the second sentence.

■ 11. Amend § 120.433 by revising paragraph (a), redesignating paragraph (b) as (c), and adding a new paragraph (b) to read as follows:

§ 120.433 What are the SBA's other requirements for sales and sales of participating interests?

* * * * *

(a) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its discretion;

(b) The Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission); and

* * * * *

■ 12. Amend § 120.434 by revising paragraph (b), redesignating paragraphs (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (h), and adding a new paragraph (c) to read as follows:

§ 120.434 What are SBA's requirements for loan pledges?

* * * * *

(b) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its discretion;

(c) The Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

■ 13. Revise § 120.435 introductory text to read as follows:

§ 120.435 Which loan pledges do not require notice to or consent by SBA?

Notwithstanding the provisions of § 120.434(e), 7(a) loans may be pledged for the following purposes without notice to or consent by SBA:

* * * * *

§ 120.442 [Removed]

■ 14. Remove § 120.442.

■ 15. Amend § 120.451 by revising the last sentence in paragraph (a), revising paragraph (b)(3), removing paragraph (c), redesignating paragraph (d) as (c), redesignating paragraph (e) as (d) and revising its last sentence, and adding a new paragraph (e) to read as follows:

§ 120.451 How does a Lender become a PLP Lender?

(a) * * * The SBA field office will forward its recommendation to an SBA centralized loan processing center which will submit its recommendation and supporting documentation to the appropriate Office of Capital Access official in accordance with Delegations of Authority for final decision.

(b) * * *

(3) Has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

(d) * * * The recertification decision is made by the appropriate Office of Capital Access official in accordance with Delegations of Authority and is final.

(e) When a PLP Lender's Supplemental Guaranty Agreement expires, SBA may recertify the Lender as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies, procedures, SBA performance, Risk Rating, review or examination results, and other risk

related information as determined by SBA.

* * * * *

§ 120.454 [Removed]

■ 16. Remove § 120.454.

§ 120.455 [Removed]

■ 17. Remove § 120.455.

■ 18. Add new undesignated center heading before § 120.460 to read as follows:

SBA Supervised Lenders

■ 19. Add new § 120.460 to read as follows:

§ 120.460 What are SBA's additional requirements for SBA Supervised Lenders?

(a) In general. In addition to complying with SBA's requirements for SBA Lenders, an SBA Supervised Lender must meet the additional requirements set forth in this regulation and the SBA Supervised Lender regulations that follow.

(b) Operations and internal controls. Each SBA Supervised Lender's board of directors (or management, if the SBA Supervised Lender is a division of another company and does not have its own board of directors) must adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The internal control policy must, at a minimum:

(1) Direct management to assign responsibility for the internal control function (covering financial, credit, credit review, collateral, and administrative matters) to an officer or officers of the SBA Supervised Lender;

(2) Adopt and set forth procedures for maintenance and periodic review of the internal control function; and

(3) Direct the operation of a program to review and assess the SBA Supervised Lender's assets. The asset review program policies must specify the following:

(i) Loan, loan-related asset, and appraisal review standards, including standards for scope of selection for review (of any such loan, loan-related asset or appraisal) and standards for work papers and supporting documentation;

(ii) Asset quality classification standards consistent with the standardized classification systems used by the Federal Financial Institution Regulators;

(iii) Specific internal control requirements for the SBA Supervised Lender's major asset categories (cash and investment securities), lending, and the issuance of debt;

(iv) Specific internal control requirements for the SBA Supervised Lender's oversight of Lender Service Providers; and

(v) Standards for training to implement the asset review program.

■ 20. Add new § 120.461 to read as follows:

§ 120.461 What are SBA's additional requirements for SBA Supervised Lenders concerning records?

(a) *Report filing.* All SBA Supervised Lender-specific reports (including all SBLC-only reports) must be filed with the appropriate Office of Capital Access official in accordance with Delegations of Authority.

(b) *Maintenance of records.* An SBA Supervised Lender must maintain at its principal business office accurate and current financial records, including books of accounts, minutes of stockholder, directors, and executive committee meetings, and all documents and supporting materials relating to the SBA Supervised Lender's transactions. However, securities held by a custodian pursuant to a written agreement are exempt from this requirement.

(c) *Permanent preservation of records.* An SBA Supervised Lender must permanently preserve in a manner permitting immediate (one business day) retrieval the following documentation for the financial statements and other reports required by § 120.464 (and the accompanying certified public accountant's opinion):

(1) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and additional paid-in capital, income, and expense accounts;

(2) All general and special journals (or other records forming the basis for entries in such ledgers); and

(3) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(d) *Other preservation of records.* An SBA Supervised Lender must preserve for at least 6 years following final disposition of each individual SBA loan:

(1) All applications for financing;

(2) Lending, participation, and escrow agreements;

(3) Financing instruments; and

(4) All other documents and supporting material relating to such loans, including correspondence.

(e) *Electronic preservation.* Records and other documents referred to in this section may be preserved electronically if the original is available for retrieval within 15 working days.

■ 21. Add new § 120.462 to read as follows:

§ 120.462 What are SBA's additional requirements on capital maintenance for SBA Supervised Lenders?

(a) *Capital adequacy.* The board of directors (or management, if the SBA Supervised Lender is a division of another company and does not have its own board of directors) of each SBA Supervised Lender must determine capital adequacy goals; that is, the total amount of capital needed to assure the SBA Supervised Lender's continued financial viability and provide for any necessary growth. The minimum standards set in § 120.471 for SBLCs and those established by state regulators for NFRLs are not to be adopted as the ideal capital level for a given SBA Supervised Lender. Rather, the minimum standards are to serve as minimum levels of capital that each SBA Supervised Lender must maintain to protect against the credit risk and other general risks inherent in its operation.

(b) *Capital plan.* (1) The board of directors of each SBA Supervised Lender must establish, adopt, and maintain a formal written capital plan. The plan must include any interim capital targets that are necessary to achieve the SBA Supervised Lender's capital adequacy goals as well as the minimum capital standards. The plan must address any projected dividend goals, equity retirements, or any other anticipated action that may decrease the SBA Supervised Lender's capital. The plan must set forth the circumstances in which capital retirements (e.g., dividends, distributions of capital or purchase of treasury stock) can occur. In addition to factors described above that must be considered in meeting the minimum standards, the board of directors must also address the following factors in developing the SBA Supervised Lender's capital adequacy plan:

(i) Management capability;

(ii) Quality of operating policies, procedures, and internal controls;

(iii) Quality and quantity of earnings;

(iv) Asset quality and the adequacy of the allowance for loan losses within the loan portfolio;

(v) Sufficiency of liquidity; and

(vi) Any other risk-oriented activities or conditions that warrant additional capital (e.g., portfolio growth rate).

(2) An SBA Supervised Lender must keep its capital plan current, updating it at least annually or more often as operating conditions may warrant.

(c) *Certification of compliance.* Within 45 days of the end of each fiscal quarter, each SBA Supervised Lender

must furnish the SBA with a calculation of capital and certification of compliance with its minimum capital requirement as set forth in § § 120.471, 120.472, or 120.474, as applicable, for SBLCs and as established by state regulators for NFRLs. The SBA Supervised Lender's chief financial officer must certify the calculation to be correct. The quarterly calculation and certification of compliance may be included in the SBA Supervised Lender's Quarterly Condition Report.

(d) *Capital impairment.* An SBA Supervised Lender must meet its minimum regulatory capital requirement and avoid capital impairment. Capital impairment exists if an SBA Supervised Lender fails to meet its minimum regulatory capital requirement under §§ 120.471, 120.472, and 120.474 for SBLCs or as established by state regulators for NFRLs. An SBA Supervised Lender must provide the appropriate Office of Capital Access official in accordance with Delegations of Authority written notice of any failure to meet its minimum capital requirement within 30 calendar days of the month-end in which the impairment occurred. Unless otherwise waived by the appropriate Office of Capital Access official in accordance with Delegations of Authority in writing, an SBA Supervised Lender may not present any loans to SBA for guaranty until the impairment is cured. SBA may waive the presentment prohibition for good cause as determined by SBA in its discretion. In the case of differences in calculating capital or capital requirements between the SBA Supervised Lender and SBA, SBA's calculations will prevail until differences between the two calculations are resolved.

(e) *Capital restoration plan.* (1) *Filing requirement.* An SBA Supervised Lender must file a written capital restoration plan with SBA within 45 days of the date that the SBA Supervised Lender provides notice to SBA under paragraph (d) of this section or receives notice from SBA (whichever is earlier) that the SBA Supervised Lender has not met its minimum capital requirement, unless SBA notifies the SBA Supervised Lender in writing that the plan is to be filed within a different time period.

(2) *Plan content.* An SBA Supervised Lender must detail the steps it will take to meet its minimum capital requirement; the time within which each step will be taken; the timeframe for accomplishing the entire capital restoration; and the person or department at the SBA Supervised Lender charged with carrying out the capital restoration plan.

(3) *SBA response.* SBA will provide written notice of whether the capital restoration plan is approved or not or whether SBA will seek additional information. If the capital restoration plan is not approved by SBA, the SBA Supervised Lender will submit a revised capital restoration plan within the timeframe specified by SBA.

(4) *Amendment of capital restoration plan.* An SBA Supervised Lender that has submitted an approved capital restoration plan may, after prior written notice to and approval by SBA, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the SBA Supervised Lender must implement the capital restoration plan as approved prior to the proposed amendment.

(5) *Failure.* If an SBA Supervised Lender fails to submit a capital restoration plan that is acceptable to SBA within its discretion within the required timeframe, or fails to implement, in any material respect as determined by SBA in its discretion, its SBA approved capital restoration plan within the plan timeframe, SBA may undertake enforcement actions under § 120.1500.

■ 22. Add new § 120.463 to read as follows:

§ 120.463—Regulatory accounting—What are SBA's regulatory accounting requirements for SBA Supervised Lenders?

(a) *Books and records.* The books and records of an SBA Supervised Lender must be kept on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as promulgated by the Financial Accounting Standards Board (FASB), supplemented by Regulatory Accounting Principles (RAP) as identified by SBA in Policy, Procedural or Information Notices, from time to time.

(b) *Annual audit.* Each SBA Supervised Lender must have its financial statements audited annually by a certified public accountant experienced in auditing financial institutions. The audit must be performed in accordance with generally accepted auditing standards as adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) for non-public companies and by the Public Company Accounting Oversight Board (PCAOB) for public companies. Annually, the auditor must issue an audit report with an opinion as to the fairness of the SBA Supervised Lender's financial statements and their compliance with GAAP.

(c) *Auditor qualifications.* The audit shall be conducted by an independent certified public accountant who:

(1) Is registered or licensed to practice as a certified public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the SBA Supervised Lender's principal office is located;

(2) Agrees in the engagement letter with the SBA Supervised Lender to provide the SBA with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the AICPA Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff;

(4) Has received a peer review or is enrolled in a peer review program, that meets AICPA guidelines; and

(5) Is otherwise acceptable to SBA.

(d) *Change of auditor.* If an SBA Supervised Lender discharges or changes its auditor, it must notify SBA in writing within ten days of the occurrence. Such notification must provide:

(1) The name, address, and telephone number of the discharged auditor; and

(2) If the discharge/change involved a dispute over the financial statements, a reasonably detailed statement of all the reasons for the discharge or change. This statement must set out the issue in dispute, the position of the auditor, the position of the SBA Supervised Lender, and the effect of each position on the balance sheet and income statement of the SBA Supervised Lender.

(e) *Specific accounting requirements.* (1) Each SBA Supervised Lender must maintain an allowance for losses on loans and other assets that is sufficient to absorb all probable and estimated losses that may reasonably be expected based on the SBA Supervised Lender's historical performance and reasonably-anticipated events. Each SBA Supervised Lender must maintain documentation of its loan loss allowance calculations and analysis in sufficient detail to permit the SBA to understand the assumptions used and the application of those assumptions to the assets of the SBA Supervised Lender.

(2) The unguaranteed portions of loans determined to be uncollectible must be charged-off promptly. If the portion determined to be uncollectible by the SBA Supervised Lender is different from the amount determined

by its auditors or the SBA, the SBA Supervised Lender must charge-off such amount as the SBA may direct.

(3) Each SBA Supervised Lender must classify loans as:

(i) ''Nonaccrual,'' if any portion of the principal or interest is determined to be uncollectible and

(ii) ''Formally restructured,'' if the loan meets the ''troubled debt restructuring'' definition set forth in FASB Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings.

(4) When one loan to a borrower is classified as nonaccrual or formally restructured, all loans to that borrower must be so classified unless the SBA Supervised Lender can document that the loans have independent sources of repayment.

(f) *Valuing loan servicing rights and residual interests.* Each SBA Supervised Lender must account for loan sales transactions and the valuation of loan servicing rights in accordance with GAAP. At the end of each quarter, the SBA Supervised Lender must review for reasonableness the existing environmental assumptions used in the valuation. Particular attention must be given to interest rate and repayment rate assumptions. Assumptions considered no longer reasonable must be modified and modifications must be reflected in the valuation and must be documented and supported by a market analysis. Work papers reflecting the analysis of assumptions and any resulting adjustment in the valuation must be maintained for SBA review in accordance with § 120.461. SBA may require an SBA Supervised Lender to use industry averages for the valuation of servicing rights.

■ 23. Add new § 120.464 to read as follows:

§ 120.464 Reports to SBA.

(a) An SBA Supervised Lender must submit the following to SBA:

(1) *Annual Report.* Within three months after the close of each fiscal year, each SBA Supervised Lender must submit to SBA two copies of an annual report including audited financial statements as prepared by a certified public accountant in accordance with § 120.463. Specifically, the annual report must, at a minimum, include the following:

(i) Audited balance sheet;

(ii) Audited statement of income and expense;

(iii) Audited reconciliation of capital accounts;

(iv) Audited source and application of funds;

(v) Such footnotes as are necessary to an understanding of the report;

(vi) Auditor's letter to management on internal control weaknesses; and

(vii) The auditor's report.

(2) *Quarterly Condition Reports.* By the 45th calendar day following the end of each calendar quarter, each SBA Supervised Lender must submit a Quarterly Condition Report in a form and content as the SBA may prescribe from time to time. At a minimum, the Quarterly Condition Report must include the SBA Supervised Lender's quarterly financial statements, which may be internally prepared. The SBA Supervised Lender must apply uniform definitions to categories of nonperforming loans and include recovery amounts on liquidated loans. SBA may, on a case-by-case basis, depending on an SBA Supervised Lender's size and the quality of its assets, adjust the requirements for content and frequency of filing Quarterly Condition Reports.

(3) *Legal and Administrative Proceeding Report.* Each SBA Supervised Lender must report any legal or administrative proceeding by or against the SBA Supervised Lender, or against any officer, director or employee of the SBA Supervised Lender for an alleged breach of official duty, within ten business days after initiating or learning of the proceeding, and also must notify the SBA of the terms of any settlement or final judgment. The SBA Supervised Lender must include such information in any reporting required under other provisions of SBA regulations.

(4) *Stockholder Reports.* Each SBA Supervised Lender must submit to SBA a copy of any report furnished to its stockholders in any manner, within 30 calendar days after submission to stockholders, including any prospectus, letter, or other document, concerning the financial operations or condition of the SBA Supervised Lender.

(5) *Reports of Changes.* Each SBA Supervised Lender must submit to SBA a summary of any changes in the SBA Supervised Lender's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any change in capitalization, including such types of change as are identified in this part 120;

(iv) Any changes affecting an SBA Supervised Lender's eligibility to continue to participate as an SBA Supervised Lender; and

(v) Notice of any pledge of stock (within 30 calendar days of the transaction) if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness.

(6) *Report of Changes in Financial Condition.* In addition to other reports required under this part 120, each SBA Supervised Lender must submit a report to SBA on any material change in financial condition. The SBA Supervised Lender must submit such report promptly, but no later than ten days after its management becomes aware of such change (except as provided for in § 120.462(d)). Failure to promptly notify SBA concerning a material change in financial condition may lead to enforcement action.

(7) *Other Reports.* Each SBA Supervised Lender must submit such other reports as SBA from time to time may in writing require.

(b) *Preparing financial reports for filing.* Each SBA Supervised Lender must prepare financial reports:

(1) In accordance with all applicable laws, regulations, procedures, standards, and such instructions and specifications and in such form and media format as may be prescribed by SBA from time to time;

(2) On an accrual basis, in accordance with GAAP principles and such other accounting requirements, standards, and procedures as may be prescribed by the SBA from time to time;

(3) That contain all applicable footnotes in accordance with GAAP principals, one of which includes a brief analysis of how the SBA Supervised Lender complies with SBA's capital regulations, as applicable; and

(4) In such manner as to facilitate the reconciliation of these reports with the books and records of the SBA Supervised Lender.

(c) *Responsibility for assuring the accuracy of filed financial reports.* Each financial report filed with SBA must be certified as having been prepared in accordance with all applicable regulations, SOPs, notices, and instructions and to be a true, accurate, and complete representation of the financial condition and financial performance of the SBA Supervised Lender to which it applies. The reports must be certified by the officer of the reporting SBA Supervised Lender named for that purpose by action of the institution's board of directors. If the institution's board of directors has not acted to name an officer to certify the correctness of its reports of financial condition and financial performance,

then the reports must be certified by the president or chief executive officer of the reporting SBA Supervised Lender.

(d) *Waiver.* The appropriate Office of Capital Access official in accordance with Delegations of Authority may in his/her discretion waive any § 120.464 reporting requirement for SBA Supervised Lenders for good cause (including, but not limited to, where an SBA Supervised Lender has a relatively small SBA loan portfolio), as determined by SBA. SBA Supervised Lenders must request the waiver in writing and include all supporting reasons and documentation. The waiver decision of the appropriate Office of Capital Access official in accordance with Delegations of Authority is final.

■ 24. Add new § 120.465 to read as follows:

§ 120.465 Civil penalty for late submission of required reports.

(a) *Obligation to submit required reports by applicable due dates.* SBA Supervised Lenders must submit complete reports by the due dates described in the regulations or as directed in writing by SBA. SBA considers any report that an SBA Supervised Lender sends to SBA by the applicable due date but that is submitted only in part, to have not been submitted by the applicable due date. SBA also considers any report that is postmarked by the due date to be submitted by the due date.

(b) *Amount of civil penalty.* For each day past the due date for such report, the SBA Supervised Lender must pay to SBA a civil penalty of not more than $5,000 per day per report. Such civil penalty continues to accrue until and including the date upon which SBA Supervised Lender submits the complete report. In determining the amount of the civil penalty to be assessed, SBA may consider the financial resources and good faith of the SBA Supervised Lender, the gravity of the violation, the history of previous violations and any such other matters as justice may require.

(c) *Notification of amount of civil penalty.* SBA will notify the SBA Supervised Lender in writing of the amount of civil penalties imposed either upon receiving the required complete report or at such other time as SBA determines. The SBA Supervised Lender must pay this amount to SBA within 30 days of the date of SBA's written demand.

(d) *Identification during examination.* SBA may also impose on an SBA Supervised Lender a civil penalty as described in this section if SBA discovers, during an examination pursuant to subpart I of this Part 120 or otherwise, that the SBA Supervised Lender did not submit a required report by the due date.

(e) *Extensions of submission due dates.* (1) An SBA Supervised Lender may request in writing to SBA that SBA extend its report due date. The request must reference the report and its due date, state the reasonable cause for extension, and assert how much additional time is needed in order to submit a complete report. SBA will advise SBA Supervised Lender in writing as to whether it approved or denied the extension request. If SBA determines that there is reasonable cause to grant an extension and it is not due to willful neglect, SBA will establish a new due date. Such determination as to willful neglect and reasonable cause is in SBA's discretion. SBA will consider the following factors in determining willful neglect:

(i) Whether the SBA Supervised Lender failed to file required reports for more than two reporting periods and

(ii) If SBA provided the SBA Supervised Lender notice of the failure to file and the SBA Supervised Lender failed to respond or failed to provide a reasonable explanation for the filing failure in its response.

(2) If SBA disapproves the extension, the due date remains the same. The civil penalty accrues regardless of whether the SBA Supervised Lender files an extension request. If SBA approves the extension, SBA will waive the civil penalty that has accrued so far for that particular report. However, a new civil penalty will accrue if the SBA Supervised Lender does not submit a complete report by the new due date established by SBA.

(f) *Requests for reduction or exemption.* (1) An SBA Supervised Lender may request a reduction or exemption from the civil penalty in writing to SBA. The request must reference the required report, its due date and the amount sought for reduction, and state in detail the reasons for the reduction. SBA will consider the following factors:

(i) Whether there is reasonable cause for failure to file timely and it was not due to willful neglect;

(ii) Whether the SBA Supervised Lender has demonstrated to SBA's satisfaction that it has modified its internal procedures to comply with reporting requirements in the future; and

(iii) Whether the SBA Supervised Lender has demonstrated to SBA's satisfaction, based on financial information fully disclosed together with its request, that it would have difficulty paying the civil penalty assessed.

(2) SBA must also determine that a reduction or exemption is not inconsistent with the public interest or the protection of SBA.

(3) SBA may in writing approve the exemption, reduce the civil penalty, or deny the exemption.

(4) If SBA grants the reduction request or denies the reduction or exemption, the SBA Supervised Lender must pay the amount owed within 30 days of the letter date. Civil penalties will accrue while the request is pending.

(g) *Reconsideration of decisions.* An SBA Supervised Lender may request in writing to the Associate Administrator for Capital Access (AA/CA) to reconsider its request for extension, reduction, or exemption. The reconsideration request must be received by SBA within 30 days of the date of the letter denying the SBA Supervised Lender's original request. SBA will not consider untimely requests. The SBA Supervised Lender must include any additional information or documentation to support its reconsideration request. SBA will issue a written decision on the reconsideration request. The decision is a final agency decision. If on reconsideration, a civil penalty remains due, the SBA Supervised Lender must pay to SBA the civil penalty within 30 days of the written decision or as otherwise directed. Civil penalties will continue to accrue while the reconsideration request is pending.

(h) *Other enforcement actions.* SBA may seek additional remedies for failure to timely file reports as authorized by law.

(i) *Exception for affiliate of SBLC.* Civil penalties under this section do not apply to any affiliate of an SBLC that procures at least 10% of its annual purchasing requirements from small manufacturers.

■ 25. Revise § 120.470 to read as follows:

§ 120.470 What are SBA's additional requirements for SBLCs?

In addition to complying with SBA's requirements for SBA Lenders and SBA Supervised Lenders, an SBLC must meet the requirements contained in this regulation and the SBLC regulations that follow.

(a) *Lending.* An SBLC may only make:

(1) Loans under section 7(a) (except section 7(a)(13) of the Act in participation with SBA); and/or

(2) SBA guaranteed loans to Intermediaries (see subpart G of this part). Such loans are subject to the same

conditions as guaranteed loans made to Intermediaries by 7(a) Lenders.

(b) *Business structure.* An SBLC must be a corporation (profit or non-profit) or a limited liability company or limited partnership.

(c) *Written agreement.* An SBLC must sign a written agreement with SBA.

(d) *Dual control.* An SBLC must maintain dual control over disbursement of funds and withdrawal of securities.

(1) An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer, provided that such action is permitted under the SBLC's fidelity bond.

(2) There must be two or more bonded officers, or one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC must furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing control procedures.

(e) *Fidelity insurance.* An SBLC must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $2,000,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304–9308.

(f) *Common control.* (1) An SBLC must not control, be controlled by, or be under common control with another SBLC.

(2) In the case of a purchase of an SBLC by an organization that already owns an SBLC, the purchasing entity will have six months to submit a plan to SBA for the divestiture of one of the SBLCs. All divestiture plans must be approved by SBA and SBA may withhold approval in its discretion. Divestiture of the SBLC must occur within one year of purchase date.

(3) Without prior written SBA approval, an Associate of one SBLC must not be an Associate of another SBLC or of any entity which directly or indirectly controls, or is under common control with, another SBLC.

(4) For purposes of paragraph (f) of this section, common control means a condition where two or more SBLCs, either through ownership, management, contract, or otherwise, are under the Control of one group or Person (as defined in § 120.10 of this chapter). Two or more SBLCs are presumed to be under common control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners.

(5) ''Affiliate'' has the meaning set forth in § 121.103 of this chapter.

(6) ''Control'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an SBLC or other concern, whether through the ownership of voting securities, by contract, or otherwise. The common control presumption may be rebutted by evidence satisfactory to SBA.

(g) *Management.* An SBLC must employ full time professional management.

(h) *Borrowed funds.* In general, an SBLC may not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock must not use personally-borrowed funds to purchase the stock unless the net worth of the shareholder is at least twice the amount borrowed or unless the shareholder receives SBA's prior written approval for a lower ratio.

■ 26. Revise § 120.471 to read as follows:

§ 120.471 What are the minimum capital requirements for SBLCs?

(a) *Minimum capital requirements.* Each SBLC must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least $1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is more.

(b) *Composition of capital.* For purposes of complying with paragraph (a) of this section, capital consists only of one or more of the following:

(1) Common stock;

(2) Preferred stock that is noncumulative as to dividends and does not have a maturity date;

(3) Additional paid-in capital representing amounts paid for stock in excess of the par value;

(4) Retained earnings of the business; and/or

(5) For limited liability companies and limited partnerships, capital contributions must not be subject to repayment at any specific time, must not be subject to withdrawal and must have no cumulative priority return.

(c) *Voluntary capital reduction.* Without prior written SBA approval, an SBLC must not voluntarily reduce its capital, or repurchase and hold more than 2 percent of any class or combination of classes of its stock.

(d) *Issuance of securities.* Without prior written SBA approval, an SBLC must not issue any securities (including stock options and debt securities) except stock dividends.

■ 27. Revise § 120.472 to read as follows:

§ 120.472 Higher individual minimum capital requirement.

The Associate Administrator for Capital Access (AA/CA) may require, under § 120.473(d), an SBLC to maintain a higher level of capital, if the AA/CA determines, in his/her discretion, that the SBLC's level of capital is potentially inadequate to protect the SBA from loss due to the financial failure of the SBLC. The factors to be considered in the determination will vary in each case and may include, for example:

(a) Specific conditions or circumstances pertaining to the SBLC;

(b) Exigency of those circumstances or potential problems;

(c) Overall condition, management strength, and future prospects of the SBLC and, if applicable, its parent or affiliates;

(d) The SBLC's liquidity and existing capital level, and the performance of its SBA loan portfolio;

(e) The management views of the SBLC's directors and senior management; and

(f) Other risk-related factors, as determined by SBA.

§ 120.476 [Removed]

■ 28. Remove § 120.476.

§§ 120.473, 120.474, and 120.475 [Redesignated as §§ 120.475, 120.476, and 120.490]

■ 29. Redesignate §§ 120.473, 120.474, and 120.475 as §§ 120.475, 120.476, and 120.490, respectively.

■ 30. In newly redesignated § 120.475, revise the second sentence of paragraph (a) introductory text and revise paragraph (b) to read as follows:

§ 120.475 Change of ownership or control.

(a) * * * An SBLC must request approval of any such change from the appropriate Office of Capital Access official in accordance with Delegations of Authority. * * *

* * * * *

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority.

■ 31. Add new § 120.473 to read as follows:

§ 120.473 Procedures for determining individual minimum capital requirement.

(a) *Notice.* When SBA determines that an individual minimum capital

requirement above that set forth in this subpart or other legal authority is necessary or appropriate for a particular SBLC, SBA will notify the SBLC in writing of the proposed individual minimum capital requirement, the date by which it should be reached and will provide an explanation of why the requirement proposed is considered necessary or appropriate.

(b) *SBLC response.* The SBLC may respond to the notice. The response should include any matters which the SBLC would have SBA consider in deciding whether individual minimum capital requirements should be established for the SBLC, what those capital requirements should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the AA/CA within 30 days after the date on which the SBLC received the notice. SBA may shorten the time for response when, in the opinion of SBA, the condition of the SBLC so warrants, provided that the SBLC is informed promptly of the new time period, or the SBLC consents to the shortening of its response time. In its discretion, SBA may extend the time period for good cause.

(c) *Failure to respond.* An SBLC that does not respond within 30 days or such other time period as may be specified by SBA will have waived any objections to the proposed minimum capital requirement and the deadline for its achievement. Failure to respond will also constitute consent to the individual minimum capital requirement.

(d) *Decision.* After the close of the SBLC's response period, the AA/CA will decide, based on a review of SBA reasons for proposing the individual minimum capital requirement, the SBLC's response, and other information concerning the SBLC, whether the individual minimum capital requirement should be established for the SBLC and, if so, the requirement and the date it will become effective. The SBLC will be notified of the decision in writing. The notice will include an explanation of the decision; except for a decision not to establish an individual minimum capital requirement for the SBLC.

(e) *Submission of plan.* The decision may require the SBLC to develop and submit to SBA, within a time period specified, an acceptable plan to reach the individual minimum capital requirement by the date required.

(f) *Change in circumstances.* If, after SBA's decision in paragraph (d) of this section, there is a change in the circumstances affecting the SBLC's capital adequacy or its ability to reach the required individual minimum capital requirement by the specified date, either the SBLC or the AA/CA may propose to the other a change in the individual minimum capital requirement for the SBLC, the date when the individual minimum must be achieved, and/or the SBLC's plan (if applicable). The AA/CA may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision by the AA/CA on reconsideration, SBA's original decision and any plan required under that decision will continue in full force and effect.

■ 32. Add new § 120.474 to read as follows:

§ 120.474 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the individual minimum capital requirement for an SBLC may be established or revised through a written agreement or cease and desist proceedings under subpart I of this part.

■ 33. Amend § 120.630 by adding paragraph (a)(5) to read as follows:

§ 120.630 Qualifications to be a Pool Assembler.

(a) * * *

(5) For any pool assembler that is an SBA Lender, that the SBA Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 34. Revise § 120.702(b) to read as follows:

§ 120.702 Are there limitations on who can be an Intermediary or on where an Intermediary may operate?

* * * * *

(b) *Limitation to one state.* An Intermediary may not operate in more than one state unless the appropriate Office of Capital Access official in accordance with Delegations of Authority determines that it would be in the best interests of the small business community for it to operate across state lines.

* * * * *

■ 35. Amend § 120.710 by revising paragraphs (c), (d), the introductory text of paragraph (e) and paragraph (e)(1) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

* * * * *

(c) *SBA review of Loan Loss Reserve Fund.* After an Intermediary has been in the Microloan program for five years, it may request SBA's appropriate Office of Capital Access official in accordance with Delegations of Authority to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. Upon receipt of such request, he/she will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve Fund.* The appropriate Office of Capital Access official in accordance with Delegations of Authority has the authority to reduce the percentage of an Intermediary's Portfolio that it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. The appropriate Office of Capital Access official in accordance with Delegations of Authority cannot reduce the LLRF to less than ten percent of the Portfolio.

(e) *What must an intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?* To receive a reduction in its LLRF, an Intermediary must:

(1) Have satisfactory SBA performance, as determined by SBA in its discretion. The Intermediary's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission); and

* * * * *

§ 120.716 [Removed]

■ 36. Remove § 120.716.

■ 37. Amend § 120.812 to add three new sentences at the end of paragraph (c) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

* * * * *

(c) * * * To be considered for permanent CDC status or an extension of probation, the CDC must have

satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

* * * * *

■ 38. Amend § 120.820 to add a new paragraph (c) to read as follows:

§ 120.820 CDC non-profit status and good standing.

* * * * *

(c) Must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

■ 39. Revise § 120.826 to read as follows:

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with the following requirements:

(a) *In general.* CDCs must meet all 504 Loan Program Requirements. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit all reports required by SBA.

(b) *Operations and internal controls.* Each CDC's board of directors must adopt an internal control policy which provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board adopted internal control policy must, at a minimum:

(1) Direct management to assign the responsibility for the internal control function (covering financial, credit, credit review, collateral, and administrative matters) to an officer or officers of the CDC;

(2) Adopt and set forth procedures for maintenance and periodic review of the internal control function;

(3) Direct the operation of a program to review and assess the CDC's 504-related loans. For the 504 review program, the internal control policies must specify the following:

(i) Loan, loan-related collateral, and appraisal review standards, including standards for scope of selection (for review of any such loan, loan-related collateral or appraisal) and standards for work papers and supporting documentation;

(ii) Loan quality classification standards consistent with the standardized classification systems used by the Federal Financial Institution Regulators;

(iii) Specific control requirements for the CDC's oversight of Lender Service Providers; and

(iv) Standards for training to implement the loan review program; and

(4) Address other control requirements as may be established by SBA.

(c) *Annual Audited/Reviewed Financial Statements.* Each CDC with a 504 loan portfolio balance of $20 million or more (as calculated by SBA) must have its financial statements audited annually by a certified public accountant that is independent and experienced in auditing financial institutions. The audit must be performed in accordance with generally accepted auditing standards as adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). The auditor must be independent, as defined by the AICPA, of the CDC. Annually, the auditor must issue an opinion as to the fairness of the CDC's financial statements and their compliance with GAAP. For CDCs with a 504 portfolio balance of less than $20 million (as calculated by SBA), the CDC's annual financial statements submitted to SBA must be reviewed by an independent CPA in accordance with GAAP.

(d) *Auditor qualifications.* The audit or review must be conducted by an independent certified public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the CDC's principal office is located;

(2) Agrees in the engagement letter with the CDC to provide the SBA with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the AICPA Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff;

(4) Has received a peer review or is enrolled in a peer review program that meets AICPA guidelines; and

(5) Is otherwise acceptable to SBA.

■ 40. Amend § 120.830 to revise paragraph (a) to read as follows:

§ 120.830 Reports a CDC must submit.

* * * * *

(a) An annual report within one hundred-eighty days after the end of the CDC's fiscal year (to include audited or reviewed financial statements of the CDC, as applicable, and any affiliates or subsidiaries of the CDC prepared in accordance with § 120.826(c) and (d)), and such interim reports as SBA may require.

(1) The audited financial statements must, at a minimum, include the following:

(i) Audited balance sheet;

(ii) Audited statement of income (or receipts) and expense;

(iii) Audited statement of source and application of funds;

(iv) Such footnotes as are necessary to an understanding of the financial statements;

(v) Auditor's letter to management on internal control weaknesses; and

(vi) The auditor's report.

(2) The reviewed financial statements must, at a minimum, include the following:

(i) Balance sheet;

(ii) Statement of income (or receipts) and expense;

(iii) Statement of source and application of funds;

(iv) Such footnotes as are necessary to an understanding of the financial statements; and

(v) The accountant's review report.

* * * * *

■ 41. Amend § 120.839 to add three new sentences after the second sentence in the introductory text to read as follows:

§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

* * * In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical

performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission). * * *

* * * * *

■ 42. Revise § 120.841(c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) *CDC reviews.* CDC reviews conducted by SBA must be current (within the last 24 months, if applicable) for applicants for ALP status. The CDC must have received a review assessment of either ''Acceptable'' or ''Acceptable With Corrective Actions Required.'' In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission);

* * * * *

■ 43. Revise § 120.845(b) to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

* * * * *

(b) *Application.* A CDC must apply for PCLP status to the Lead SBA Office. The Lead SBA Office will send its written recommendation and the application to SBA's PCLP Loan Processing Center. The PCLP Loan Processing Center will review these materials and forward them to the appropriate Office of Capital Access official in accordance with Delegations of Authority for final determination.

* * * * *

■ 44. Remove the undesignated center heading before § 120.853.

■ 45. Revise the heading for § 120.853 to read as set forth below and remove the first sentence of the section.

§ 120.853 Inspector General audits of CDCs.

* * * * *

■ 46. Remove the undesignated center heading before § 120.854.

§ 120.854 [Removed]

■ 47. Remove § 120.854.

§ 120.855 [Removed]

■ 48. Remove § 120.855.

§ 120.856 [Removed]

■ 49. Remove § 120.856.

■ 50. Revise § 120.956 to read as follows:

§ 120.956 Suspension or revocation of brokers and dealers.

The appropriate Office of Capital Access official in accordance with Delegations of Authority may suspend or revoke the privilege of any broker or dealer to participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons, at least 10 business days prior to the effective date of the suspension or revocation. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of this official will remain in effect pending resolution of the appeal.

■ 51. Revise the heading to subpart I and add an undesignated center heading and §§ 120.1000, 120.1005, 120.1010, 120.1015, 120.1025, 120.1050, 120.1051, 120.1055, and 120.1060 to read as follows:

Subpart I—Risk-Based Lender Oversight

Supervision

Sec.

* * * * *

Subpart I—Risk-Based Lender Oversight

Supervision

§ 120.1000 Risk-Based Lender Oversight.

(a) *Risk-Based Lender Oversight.* SBA supervises, examines, and regulates, and enforces laws against, SBA Supervised Lenders and the SBA operations of SBA Lenders, Intermediaries, and NTAPs.

(b) *Scope.* Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries and NTAPs, However, SBA has separate regulations for enforcement grounds and enforcement actions for Intermediaries and NTAPs at § 120.1425 and § 120.1540.

§ 120.1005 Bureau of PCLP Oversight.

SBA's Bureau of PCLP Oversight within OCRM, monitors the capitalization of PCLP CDC pilot participants' LLRFs and performs other related functions.

§ 120.1010 SBA access to SBA Lender, Intermediary, and NTAP files.

An SBA Lender, Intermediary, and NTAP must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to review, inspect, and copy all records and documents, relating to SBA guaranteed loans or as requested for SBA oversight.

§ 120.1015 Risk Rating System.

(a) *Risk Rating.* SBA may assign a Risk Rating to all SBA Lenders, Intermediaries, and NTAPs on a periodic basis. Risk Ratings are based on certain risk-related portfolio performance factors as set forth in notices or SBA's SOPs and as published from time to time.

(b) *Rating categories.* Risk Ratings fall into one of two broad categories: Acceptable Risk Ratings or Less Than Acceptable Risk Ratings.

§ 120.1025 Off-site reviews and monitoring.

SBA may conduct off-site reviews and monitoring of SBA Lenders, Intermediaries, and NTAPs, including SBA Lenders', Intermediaries' or NTAPs' self-assessments.

§ 120.1050 On-site reviews and examinations.

(a) *On-site reviews.* SBA may conduct on-site reviews of the SBA loan operations of SBA Lenders. The on-site review may include, but is not limited to, an evaluation of the following:

(1) Portfolio performance;

(2) SBA operations management;

(3) Credit administration; and

(4) Compliance with Loan Program Requirements.

(b) *On-site examinations.* SBA may conduct safety and soundness examinations of SBA Supervised Lenders, except SBA will not conduct safety and soundness examinations of Other Regulated SBLCs under § § 120.1510 and 1511. The on-site safety and soundness examination may

include, but is not limited to, an evaluation of:

(1) Capital adequacy;

(2) Asset quality (including credit administration and allowance for loan losses);

(3) Management quality (including internal controls, loan portfolio management, and asset/liability management);

(4) Earnings;

(5) Liquidity; and

(6) Compliance with Loan Program Requirements.

(c) *On-site reviews/examinations of Intermediaries and NTAPs.* SBA may perform on-site reviews or examinations of Intermediaries and NTAPs.

(d) *Other on-site reviews or examinations.* SBA may perform other on-site reviews/examinations as needed as determined by SBA in its discretion.

§ 120.1051 Frequency of on-site reviews and examinations.

SBA may conduct on-site reviews and examinations of SBA Lenders, Intermediaries, and NTAPs on a periodic basis. SBA may consider, but is not limited to, the following factors in determining frequency:

(a) Off-site review/monitoring results, including an SBA Lender's, Intermediary's or NTAP's Risk Rating;

(b) SBA loan portfolio size;

(c) Previous review or examination findings;

(d) Responsiveness in correcting deficiencies noted in prior reviews or examinations; and

(e) Such other risk-related information as SBA, in its discretion, determines to be appropriate.

§ 120.1055 Review and examination results.

(a) *Written Reports.* SBA will provide an SBA Lender, Intermediary, and NTAP a copy of SBA's written report prepared as a result of the SBA Lender review or examination (''Report''). The Report may contain findings, conclusions, corrective actions and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender, Intermediary, and NTAP, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) *Response to review and examination Reports.* SBA Lenders, Intermediaries, and NTAPs must respond to Report findings and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender, Intermediary, or NTAP must respond within 30 days from the Report date unless SBA notifies the SBA Lender, Intermediary, or NTAP in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period. The SBA Lender, Intermediary, or NTAP response must address each finding and corrective action. In proposing a corrective action or capital restoration plan, the SBA Lender, Intermediary, or NTAP must detail: The steps it will take to correct the finding(s); the time within which each step will be taken; the timeframe for accomplishing the entire corrective action plan; and the person(s) or department at the SBA Lender, Intermediary, or NTAP charged with carrying out the corrective action or capital restoration plan, as applicable.

(c) *SBA response.* SBA will provide written notice of whether the response and, if applicable, any corrective action or capital restoration plan, is approved, or whether SBA will seek additional information or require other action.

(d) *Failure to respond or to submit or implement an acceptable plan.* If an SBA Lender, Intermediary, or NTAP fails to respond in writing to SBA, respond timely to SBA, or provide a response acceptable to SBA within SBA's discretion, or respond to all findings and required corrective actions in a Report, then SBA may take enforcement action under Subpart I. If an SBA Lender, Intermediary, or NTAP that is requested to submit a corrective action plan or capital restoration plan to SBA fails to do so in writing; fails to submit timely such plan to SBA; or fails to submit a plan acceptable to SBA within SBA's discretion, then SBA may take enforcement action under § 120.1500 through § 120.1540. If an SBA Lender, Intermediary, or NTAP fails to implement in any material respect a corrective action or capital restoration plan within the required timeframe, then SBA may undertake enforcement action under § 120.1500 through § 120.1540.

§ 120.1060. Confidentiality of Reports, Risk Ratings and related Confidential Information.

(a) *In general.* Reports and other SBA prepared review or examination related documents are the property of SBA and are loaned to an SBA Lender, Intermediary, or NTAP for its confidential use only. The Reports, Risk Ratings, and related Confidential Information are privileged and confidential as more fully explained in paragraph (b) of this section. The Report, Risk Rating, and Confidential Information must not be relied upon for any purpose other than SBA's Lender oversight and SBA's portfolio management purposes. An SBA Lender, Intermediary, or NTAP must not make any representations concerning the Report (including its findings, conclusions, and recommendations), the Risk Rating, or the Confidential Information. For purposes of this regulation, Report means the review or examination report and related documents. For purposes of this regulation, Confidential Information is defined in the SBA Lender information portal and by notice issued from time to time. Access to the Lender information portal may be obtained by contacting the OCRM.

(b) *Disclosure prohibition.* Each SBA Lender, Intermediary, and NTAP is prohibited from disclosing its Report, Risk Rating, and Confidential Information, in full or in part, in any manner, without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting them in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (for purposes of this regulation, each referred to as a ''permitted party''), and to those for whom SBA has approved access by prior written consent, and to those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing so that SBA and the Information Provider have, within their discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, ''Information Provider'' means any contractor that provides SBA with the Risk Rating. Each SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the

Report, Risk Rating, or Confidential Information other than as permitted by this regulation may result in appropriate action as authorized by law. An SBA Lender, Intermediary, and NTAP will indemnify and hold harmless SBA from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from any unauthorized use or disclosure of the Report, Risk Rating, or Confidential Information. Information Provider contact information is available from the Office of Capital Access.

■ 52. In subpart I, add an undesignated center heading and §§ 120.1400, 120.1425, 120.1500, 120.1510, 120.1511, 120.1540, and 120.1600 to read as follows:

* * * * *

Subpart I—Risk-Based Lender Oversight

* * * * *

Enforcement Actions

Sec.

Enforcement Actions

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) *Agreement.* By making SBA 7(a) guaranteed loans or 504 loans, SBA Lenders automatically agree to the terms, conditions, and remedies in Loan Program Requirements, as promulgated or issued from time to time and as if fully set forth in the SBA Form 750, Loan Guaranty Agreement or other applicable participation, guaranty, or supplemental agreement.

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in § 120.1500 or as otherwise authorized by law, if SBA determines that the grounds applicable to the enforcement action exist. Paragraphs (c) through (e) of this section list the grounds that trigger enforcement actions against each type of SBA Lender. In general, the grounds listed in paragraph (c) apply to all SBA Lenders. However, certain enforcement actions against SBA Supervised Lenders require the existence of certain grounds, as set forth in paragraphs (d) and (e). In addition, paragraph (f) of this section lists two additional grounds for taking enforcement action against CDCs that do not apply to other SBA Lenders.

(c) *Grounds in general.* Except as provided in paragraphs (d) and (e) of this section, the grounds that may trigger an enforcement action against any SBA Lender (regardless of its Risk Rating) include:

(1) Failure to maintain eligibility requirements for specific SBA programs and delegated authorities, including but not limited to: 7(a), PLP, SBAExpress, 504, ALP, PCLP, the alternative loss reserve pilot program and any pilot loan program;

(2) Failure to comply materially with any requirement imposed by Loan Program Requirements;

(3) Making a material false statement or failure to disclose a material fact to SBA. (A material fact is any fact which is necessary to make a statement not misleading in light of the circumstances under which the statement was made.);

(4) Not performing underwriting, closing, disbursing, servicing, liquidation, litigation or other actions in a commercially reasonable and prudent manner for 7(a) or 504 loans, respectively, as applicable. Evidence of such performance or actions may include, but is not limited to, the SBA Lender having a repeated Less Than Acceptable Risk Rating (generally in conjunction with other evidence) or an on-site review/examination assessment which is Less Than Acceptable;

(5) Failure within the time period specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency, or failure in any material respect to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action;

(6) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed enforcement action or immediate suspension under § 120.1500 based upon this paragraph, SBA must send prior written notice to the SBA Lender explaining why the SBA Lender's actions were uncooperative, detrimental to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct. The prior notice must also state that the SBA Lender's actions could give rise to a specified enforcement action, and provide the SBA Lender with a reasonable time to cure the deficiency before any further action is taken;

(7) Repeated failure to correct continuing deficiencies;

(8) Unauthorized disclosure of Reports, Risk Rating, or Confidential Information;

(9) Any other reason that SBA determines may increase SBA's financial risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased financial risk) or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA loans for the SBA Lender);

(10) As otherwise authorized by law; and

(11) For immediate suspension of all SBA Lenders from delegated authorities—upon a determination by SBA that one or more of the grounds in paragraph (c) or paragraph (f) of this section, as applicable, exist and that immediate action is needed to prevent significant impairment of the integrity of the 7(a) or 504 loan program.

(12) For immediate suspension of all SBA Lenders except SBA Supervised Lenders from the authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans—upon a determination by SBA that one or more of the grounds in paragraph (c) or paragraph (f) of this section, as applicable, exist and that immediate action is needed to prevent significant impairment of the integrity of the 7(a) or 504 loan program.

(d) *Grounds required for certain enforcement actions against SBA Supervised Lenders (except Other Regulated SBLCs) or, as applicable, Other Persons.* For purposes of Subpart I, Other Person means a Management Official, attorney, accountant, appraiser, Lender Service Provider or other individual involved in the SBA Supervised Lender's operations. For the below listed SBA Supervised Lender enforcement actions, the grounds that are required to take the enforcement action are:

(1) *For SBA program suspensions and revocations*—

(i) False statements knowingly made in any required written submission to SBA; or

(ii) An omission of a material fact from any written submission required by SBA; or

(iii) A willful or repeated violation of the Small Business Act (the Act) or SBA regulations; or

(iv) A willful or repeated violation of any condition imposed by SBA with respect to any application, request, or agreement with SBA; or

(v) A violation of any cease and desist order of SBA.

(2) *For SBA program immediate suspension*—SBA may suspend an SBA Supervised Lender, effective immediately, if in addition to meeting the grounds set forth in paragraph (d)(1) of this section, the Administrator (or the Deputy Administrator, only if the Administrator is unavailable to take such action) finds extraordinary circumstances and takes such action in order to protect the financial or legal position of the United States.

(3) *For cease and desist orders*—

(i) A violation of the Act or SBA regulations, or

(ii) Where an SBA Supervised Lender or Other Person engages in or is about to engage in any acts or practices that will violate the Act or SBA's regulations.

(4) *For an emergency cease and desist order*—

(i) Where grounds for cease and desist order are met,

(ii) The Administrator (or the Deputy Administrator, only if the Administrator is unavailable to take such action) finds extraordinary circumstances, and

(iii) In order to protect the financial or legal position of the United States.

(5) *For transfer of Loan portfolio*—

(i) Where a court has appointed a receiver; or

(ii) The SBA Supervised Lender is either not in compliance with capital requirements or is insolvent. An SBA Supervised Lender is insolvent within the meaning of this provision when all of its capital, surplus, and undivided profits are absorbed in funding losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and other obligations as they come due.

(6) *For transfer of servicing activity*—

(i) Where grounds for transfer of Loan portfolio are met; or

(ii) Where the SBA Supervised Lender is otherwise operating in an unsafe and unsound condition.

(7) *For order to remove Management Official*—where, in the opinion of the Administrator or his/her delegatee, the Management Official—

(i) Willfully and knowingly committed a substantial violation of the Act, SBA regulation, a final cease and desist order, or any agreement by the Management Official or the SBA Supervised Lender under the Act or SBA regulations, or

(ii) Willfully and knowingly committed a substantial breach of a fiduciary duty of that person as a Management Official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such Management Official, or

(iii) The Management Official is convicted of a felony involving dishonesty or breach of trust and the conviction is no longer subject to further judicial review (excludes writ of habeas corpus).

(8) *For order to suspend or prohibit participation of Management Official* (interim measure pending removal)—where SBA is undertaking enforcement action of removal of a Management Official.

(9) *For order to suspend or prohibit participation of Management Official due to criminal charges*—where the Management Official is charged in any information, indictment or complaint authorized by a United States attorney with a felony involving dishonesty or breach of trust.

(e) *Grounds required for certain enforcement actions against SBLCs and Other Regulated SBLCs.*

(1) *Capital directive.* If the AA/CA determines that an SBLC is capitally impaired or is otherwise being operated in an imprudent manner, the AA/CA may, in addition to any other action authorized by law, issue a directive to the SBLC to increase capital consistent with § 120.1500(d)(1).

(2) *Civil action for termination.* If an SBLC violates the Act or SBA regulations, SBA may institute a civil action to terminate SBLC rights, privileges, and the franchise under § 120.1500(d)(2).

(f) *Additional grounds specific to CDCs.* In addition to the grounds set forth in paragraphs (b) and (c) of this section, SBA may take enforcement action against a CDC for:

(1) Failure to receive SBA approval for at least four 504 loans during the last two consecutive fiscal years, or

(2) For PCLP CDCs, failure to establish or maintain a LLRF as required by the PCLP.

§ 120.1425 Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

(a) *Agreement.* By participating in the SBA Microloan or NTAP program, Intermediaries and NTAPs automatically agree to the terms, conditions, and remedies in this Part 120 as if fully set forth in their participation agreement and all other agreements jointly executed by the Intermediary or NTAP and SBA.

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in § 120.1540, or as otherwise authorized by law, if SBA determines that any of the grounds listed in paragraphs (c) through (e) of this section exist.

(c) *Grounds in general*—For any Intermediary or NTAP, grounds that may trigger enforcement action against the Intermediary or NTAP (regardless of its Risk Rating) include:

(1) Violation of any laws, regulations, or policies of the program; or

(2) Failure to meet any one of the following performance standards:

(i) Coverage of the service territory assigned by SBA, including honoring SBA's determined boundaries of neighboring intermediaries and NTAPs;

(ii) Fulfill reporting requirements;

(iii) Manage program funds and matching funds in a satisfactory and financially sound manner;

(iv) Communicate and file reports within six months after beginning participation in program;

(v) Maintain a currency rate of 85% or more for the Intermediary's SBA Microloan portfolio (that is, loans that are no more than 30 days late in scheduled payments);

(vi) Maintain a default rate in the Intermediary's Microloan portfolio of 15% or less of the cumulative dollars loaned under the program;

(vii) Maintain a staff trained in Microloan program issues and requirements; or

(viii) Any other reason that SBA determines may increase SBA's financial or program risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased risk) or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA programs for the Intermediary or NTAP).

(d) *Additional grounds specific to Intermediaries.* In addition to the grounds set forth in paragraph (c) of this section, SBA may take enforcement action against an Intermediary for:

(1) Failure to satisfactorily provide in-house technical assistance to Microloan clients and prospective Microloan clients; or

(2) Failure to close and fund a minimum of four Microloans annually.

(e) *Additional grounds specific to NTAPs.* In addition to grounds set forth in paragraph (c) of this section, SBA may take enforcement action against an NTAP for failure to show that, for every 30 clients for which the NTAP provided

technical assistance, at least one client received a loan from the private sector.

§ 120.1500 Types of enforcement actions—SBA Lenders.

Upon a determination that the grounds set forth in § 120.1400 exist, SBA may undertake, in SBA's discretion, one or more of the following enforcement actions for each of the types of SBA Lenders listed. SBA will take such action in accordance with procedures set forth in § 120.1600. If enforcement action is taken under this section and the SBA Lender fails to implement required corrective action in any material respect within the required timeframe in response to the enforcement action, SBA may take further enforcement action, as authorized by law. SBA's decision to take an enforcement action will not, by itself, invalidate a guaranty previously provided by SBA.

(a) *Enforcement actions for all SBA Lenders.* (1) *Imposition of portfolio guaranty dollar limit.* SBA may limit the maximum dollar amount that SBA will guarantee on the SBA Lender's SBA loans or debentures.

(2) *Suspension or revocation of delegated authority.* SBA may suspend or revoke an SBA Lender's delegated authority (including, but not limited to, PLP, SBA Express, or PCLP delegated authorities).

(3) *Suspension or revocation from SBA program.* SBA may suspend or revoke an SBA Lender's authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans. Section 120.1400(d)(1) sets forth the grounds for SBA program suspension or revocation of an SBA Supervised Lender (except Other Regulated SBLCs). The grounds for SBA program suspension or revocation for all other SBA Lenders are set forth in § 120.1400(c) and, as applicable, paragraph (f) of § 120.1400.

(4) *Immediate suspension.* SBA may suspend, effective immediately, an SBA Lender's delegated authority or authority to participate in the SBA loan program, or the authority to make, service, liquidate, or litigate 7(a) or 504 loans. Section 120.1400(d)(2) sets forth the grounds for SBA program immediate suspension of an SBA Supervised Lender (except Other Regulated SBLCs). The grounds for SBA program immediate suspension for all other SBA Lenders and the grounds for immediate suspension of delegated authority for all SBA Lenders are set forth in § 120.1400(c)(11) and § 120.1400(c)(12).

(5) *Debarment.* In accordance with 2 CFR Parts 180 and 2700, SBA may take any necessary action to debar a Person, as defined in § 120.10, including but not limited to an officer, a director, a general partner, a manager, an employee, an agent or other participant in the affairs of an SBA Lender's SBA operations.

(6) *Other actions available under law.* SBA may take all other enforcement actions against SBA Lenders available under law.

(b) *Enforcement actions specific to 7(a) Lenders.* In addition to those enforcement actions applicable to all SBA Lenders, SBA may suspend or revoke a 7(a) Lender's authority to sell or purchase loans or certificates in the Secondary Market.

(c) *Enforcement actions specific to SBA Supervised Lenders and Other Persons (except Other Regulated SBLCs).* In addition to those enforcement actions listed in paragraphs (a) and (b) of this section, SBA may take any one or more of the following enforcement actions specific to SBA Supervised Lenders and as applicable, Other Persons:

(1) *Cease and desist order.* SBA may issue a cease and desist order against the SBA Supervised Lender or Other Person. The Cease and Desist order may either require the SBA Supervised Lender or the Other Person to take a specific action, or to refrain from a specific action. The Cease and Desist Order may be issued as effective immediately (or as a proposal for Order). SBA may include in the cease and desist order the suspension of authority to lend.

(2) *Remove Management Official.* SBA may issue an order to remove a Management Official from office. SBA may suspend a Management Official from office or prohibit a Management Official from participating in management of the SBA Supervised Lender or in reviewing, approving, closing, servicing, liquidating or litigating any 7(a) loan, or any other activities of the SBA Supervised Lender while the removal proceeding is pending in order to protect an SBA Supervised Lender or the interests of SBA or the United States.

(3) *Initiate request for appointment of receiver.* The SBA may make application to a district court to take exclusive jurisdiction of an SBA Supervised Lender and appoint a trustee or receiver to hold or administer or liquidate the SBA Supervised Lender's assets under direction of the court. The receiver may take possession of the portfolio of 7(a) loans and sell such loans to a third party, and/or take possession of servicing activities of 7(a) loans and sell such servicing rights to a third party.

(4) *Civil monetary penalties for report filing failure.* SBA may seek civil penalties, in accordance with § 120.465, of not more than $5,000 a day against an SBA Supervised Lender that fails to file any regular or special report by its due date as specified by regulation or SBA written directive.

(d) *Enforcement actions specific to SBLCs.* In addition to those supervisory actions listed in paragraphs (a), (b), and (c) of this section, SBA may take the following enforcement actions specific to SBLCs.

(1) *Capital directive.* The AA/CA may issue a capital directive upon a determination that the grounds in § 120.1400(e)(1) exist. A directive may order the SBLC to:

(i) Achieve its minimum capital requirement applicable to it by a specified date;

(ii) Adhere to a previously submitted capital restoration plan (provided under § 120.462 or § 120.1055) to achieve the applicable capital requirement;

(iii) Submit and adhere to a capital restoration plan acceptable to SBA describing the means and time schedule by which the SBLC will achieve the applicable capital requirement (The SBLC must provide its capital restoration plan within 30 days from the date of the SBA order unless SBA notifies the SBLC that the plan is to be filed within a different time period. SBA may perform an on-site examination (generally within 90 days after the restoration plan is submitted) to verify the implementation of the plan and verify that the SBLC meets minimum capital requirements.);

(iv) Refrain from taking certain actions without obtaining SBA's prior written approval (Such actions may include but are not limited to: paying any dividend; retiring any equity; maintaining a rate of growth that causes further deterioration in the capital percentage; securitizing any unguaranteed portion of its 7(a) loans; or selling participations in any of its 7(a) loans); or

(v) Undertake a combination of any of these or similar actions.

(2) *Civil action for termination.* SBA may institute a civil action to terminate the rights, privileges, and franchises of an SBLC.

(e) *Enforcement actions specific to CDCs.* In addition to those enforcement actions listed in paragraph (a) of this section, SBA may take any one or more of the following enforcement actions specific to CDCs:

(1) Require the CDC to transfer part or all of its existing 504 loan portfolio and/or part or all of its pending 504 loan applications to SBA, another CDC, or

any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's discretion; or

(2) Instruct the Central Servicing Agent to withhold payment of servicing, late and/or other fee(s) to the CDC.

§ 120.1510 Other Regulated SBLCs.

Other Regulated SBLCs are exempt from §§ 120.465, 120.1050(b), 120.1400(d), 120.1500(c), and 120.1600(b). This exemption is not intended to preclude SBA from seeking any other remedy authorized by law or equity.

§ 120.1511 Certification and other reporting and notification requirements for Other Regulated SBLCs.

(a) *Certification.* An SBLC seeking Other Regulated SBLC status must certify to SBA in writing that its lending activities are subject to regulation by a Federal Financial Institution Regulator or state banking regulator. This certification must be executed by the chair of the board of directors of the SBLC and submitted to SBA either:

(1) Within 60 calendar days of the effective date of this section or

(2) If the SBLC becomes subject to regulation by a Federal Financial Institution Regulator or state banking regulator after the effective date of this section for any reason (e.g. license transfers), within 60 days of the date that the SBLC becomes directly examined and directly regulated by such regulator.

(b) *Contents of Certification:* This certification must include:

(1) The identity of the Federal Financial Institution Regulator or state banking regulator that regulates the lending activities of the SBLC;

(2) A statement that the Federal Financial Institution Regulator or state banking regulator identified in paragraph (b)(1) of this section regularly conducts safety and soundness examinations on the SBLC itself and not only on the SBLC's parent company or affiliate, if any; and

(3) The date of the most recent safety and soundness examination conducted on the SBLC by the Federal Financial Institution Regulator or state banking regulator. To qualify as an Other Regulated SBLC, the SBLC must have received this examination within the past 3 years of the date of certification.

(c) *Notification of examination.* An Other Regulated SBLC must notify SBA in writing each time a Federal Financial Institution Regulator or state banking regulator conducts a safety and soundness examination, and this notification must be submitted to SBA within 30 calendar days of the SBLC receiving the results of the examination. To retain its status as an Other Regulated SBLC, the Other Regulated SBLC must receive such examination, and provide the written notification to SBA, at least once every two years following initial certification.

(d) *Report.* An Other Regulated SBLC must report in writing to SBA on its interactions with other Federal Financial Institution Regulators or state banking regulator (e.g., the results of the safety and soundness examinations and any order issued against the Other Regulated SBLC), to the extent allowed by law.

(e) *Notification of change in status.* If, for any reason, an Other Regulated SBLC becomes no longer subject to regulation by a Federal Financial Institution Regulator or state banking regulator, the Other Regulated SBLC must immediately notify SBA in writing, and the exemption provided in § 120.1510 will immediately no longer apply.

(f) *Extension of timeframes.* SBA may in its discretion extend any timeframe imposed on the SBLC under this section if the SBLC can show good cause for any delay in meeting the time requirement. The SBLC may appeal this decision to the AA/CA.

(g) *Failure to satisfy requirements.* In the event that an SBLC fails to satisfy the requirements set forth in paragraphs (a), (b), and (c) of this section, then the exemption provided in § 120.1510 will not apply to the SBLC.

§ 120.1540 Types of enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

Upon a determination that any ground set out in § 120.1425 exists, the SBA may take in its discretion, one or more of the following enforcement actions against an Intermediary or NTAP:

(a) Suspension or pre-revocation sanctions which may include, but are not limited to:

(1) Accelerated reporting requirements;

(2) Accelerated loan repayment requirements for outstanding program debt to SBA, as applicable;

(3) Imposition of a temporary lending moratorium, as applicable; or

(4) Imposition of a temporary training moratorium.

(b) Revocation of authority to participate in the Microloan program which will include:

(1) Removal from the program;

(2) Liquidation of Intermediary's Microloan Revolving Fund and Loan Loss Reserve Fund accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary or NTAP;

(5) Debarment of the organization from receipt of federal funds until loan and grant repayments are met; or

(6) Taking such other actions available under law.

§ 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.

(a) *In general.* Except as otherwise set forth for the enforcement actions listed in paragraphs (b) and (c) of this section, SBA will follow the procedures listed below.

(1) *SBA's notice of enforcement action.* (i) When undertaking an immediate suspension under § 120.1500(a)(4), or prior to undertaking an enforcement action set forth in § 120.1500(a), (b), and (e) and § 120.1540, SBA will issue a written notice to the affected SBA Lender, Intermediary, or NTAP identifying the proposed enforcement action or notifying it of an immediate suspension. The notice will set forth in reasonable detail the underlying facts and reasons for the proposed action or immediate suspension. If the notice is for a proposed or immediate suspension, SBA will also state the scope and term of the proposed or immediate suspension.

(ii) If a proposed enforcement action or immediate suspension is based upon information obtained from a third party other than the SBA Lender, Intermediary, NTAP or SBA, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party, or the name of the third party in case of oral information, unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the SBA Lender, Intermediary, or NTAP.

(2) *SBA Lender, Intermediary, or NTAP's opportunity to object.* (i) An SBA Lender, Intermediary, or NTAP that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of its receipt of the notice or within some other term established by SBA in its notice, a written objection with the appropriate Office of Capital Access official in accordance with

Delegations of Authority or other SBA official identified in the notice. Notice will be presumed to have been received within five days of the date of the notice unless the SBA Lender, Intermediary, or NTAP can provide compelling evidence to the contrary.

(ii) The objection must set forth in detail all grounds known to the SBA Lender, Intermediary, or NTAP to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the SBA Lender, Intermediary, or NTAP believes is most supportive of its objection. An SBA Lender, Intermediary, or NTAP must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(iii) If an SBA Lender, Intermediary, or NTAP can show legitimate reasons as determined by SBA in SBA's discretion why it does not understand the reasons given by SBA in its notice of the action, the Agency will provide clarification. SBA will provide the requested clarification in writing to the SBA Lender, Intermediary, or NTAP or notify the SBA Lender, Intermediary, or NTAP in writing that SBA has determined that such clarification is not necessary. SBA, in its discretion, will further advise in writing whether the SBA Lender, Intermediary, or NTAP may have additional time to present its objection to the notice. Requests for clarification must be made to the appropriate Office of Capital Access official in accordance with Delegations of Authority in writing and received by SBA within the 30 day timeframe or the timeframe given by the notice for response.

(iv) An SBA Lender, Intermediary, or NTAP may request additional time to respond to SBA's notice if it can show that there are compelling reasons why it is not able to respond within the 30 day timeframe or the response timeframe given by the notice. If such requests are submitted to the Agency, SBA may, in its discretion, provide the SBA Lender, Intermediary, or NTAP with additional time to respond to the notice of proposed action or immediate suspension. Requests for additional time to respond must be made in writing to the appropriate Office of Capital Access official in accordance with Delegations of Authority or other official identified in the notice and received by SBA within the 30 day timeframe or the response timeframe given by the notice.

(v) Prior to the issuance of a final decision by SBA, if an SBA Lender, Intermediary, or NTAP can show that there is newly discovered material evidence which, despite the SBA Lender, Intermediary, or NTAP's exercise of due diligence, could not have been discovered within the timeframe given by SBA to respond to a notice, or that there are compelling reasons beyond the SBA Lender, Intermediary, or NTAP's control as to why it was not able to present a material fact or argument to SBA, and that the SBA Lender, Intermediary, or NTAP has been prejudiced by not being able to present such information, the SBA Lender, Intermediary, or NTAP may submit such information to SBA and request that the Agency consider such information in its final decision.

(3) *SBA's notice of final agency decision where SBA Lender, Intermediary, or NTAP filed objection to the proposed action or immediate suspension.* (i) If the affected SBA Lender, Intermediary, or NTAP files a timely written objection to a proposed enforcement action other than an immediate suspension in accordance with this section, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP advising whether SBA is undertaking the proposed enforcement action and setting forth the grounds for the decision. SBA will issue such a notice of decision within 90 days of either receiving the objection or from when additional information is provided under paragraph (a)(2)(v) or (a)(3)(iii) of this section, whichever is later, unless SBA provides notice that it requires additional time.

(ii) If the affected SBA Lender, Intermediary, or NTAP files a timely written objection to a notice of immediate suspension, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP within 30 days of receiving the objection advising whether SBA is continuing with the immediate suspension, unless SBA provides notice that it requires additional time. If the SBA Lender, Intermediary, or NTAP submits additional information to SBA (under paragraph (a)(2)(v) or (a)(3)(iii) of this section) after submitting its objection but before SBA issues its final decision, SBA must issue its final decision within 30 days of receiving such information, unless SBA provides notice that it requires additional time.

(iii) Prior to issuing a notice of decision, SBA in its discretion can request additional information from the affected SBA Lender, Intermediary, NTAP or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its discretion, to consider an untimely objection, it must issue a notice of final decision pursuant to this paragraph (a)(3).

(4) *SBA's notice of final agency decision where no filed objection or untimely objection not considered.* If SBA chooses not to consider an untimely objection or if the affected SBA Lender, Intermediary, or NTAP fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP that SBA is undertaking one or more of the proposed enforcement actions against the SBA Lender, Intermediary, or NTAP or that an immediate suspension of the SBA Lender, Intermediary, or NTAP will continue. Such a notice of final decision need not state any grounds for the action other than to reference the SBA Lender, Intermediary, or NTAP's failure to file a timely objection, and represents the final agency decision.

(5) *Appeals.* An SBA Lender, Intermediary, or NTAP may appeal the final agency decision only in the appropriate federal district court.

(b) *Procedures for certain enforcement actions against SBA Supervised Lenders (except Other Regulated SBLCs) and, where applicable, Management Officials and Other Persons.* (1) *Suspension and revocation actions and cease and desist orders.* If SBA seeks to suspend or revoke loan program authority (including, the authority to make, service, liquidate, or litigate SBA loans), or issue a cease and desist order to an SBA Supervised Lender or, as applicable, Other Person, SBA will follow the procedures below in lieu of those in paragraph (a) of this section.

(i) *Show cause order and hearing.* The Administrator will serve upon the SBA Supervised Lender or Other Person an order to show cause why an order suspending or revoking the authority or why a cease and desist order should not be issued. The show cause order will contain a statement of the matters of fact and law asserted by SBA, as well as the legal authority and jurisdiction under which an administrative hearing will be held, and will set forth the place and time of the administrative hearing. The hearing will be conducted by an administrative law judge in accordance with 5 U.S.C. 554–557, 15 U.S.C. 650, and applicable sections of part 134 of this chapter. The Administrative Law Judge will issue a recommended decision based on the record.

(ii) *Witnesses.* The party calling witnesses will pay the witness the same fees and mileage paid witnesses for their appearance in U.S. courts.

(iii) *Administrator finding and order issuance*. If after the administrative hearing, or the SBA Supervised Lender's or Other Person's waiver of the administrative hearing, the Administrator determines that the order should be issued, the Administrator will issue an order to suspend or revoke authority or a cease and desist order, as applicable. The order will include a statement of findings, the grounds and reasons, and will specify the order's effective date. SBA will serve the order on the SBA Supervised Lender or Other Person. The Administrator may delegate the power to issue a cease and desist order or to suspend or revoke loan program authority only if the Administrator is unavailable and only to the Deputy Administrator.

(iv) *Judicial review*. The order constitutes a final agency action. The SBA Supervised Lender or Other Person will have 20 days from the order issuance date to file an appeal in the appropriate federal district court.

(2) *Immediate suspension or immediate cease and desist order*. If SBA undertakes an immediate suspension of authority to participate in the 7(a) loan program or immediate cease and desist order against an SBA Supervised Lender or, as applicable, Other Person, SBA will within two business days follow the procedures set forth in paragraph (b)(1) of this section.

(3) *Removal of Management Official*. If SBA undertakes the removal of a Management Official of an SBA Supervised Lender, SBA will follow the procedures below in lieu of those in paragraph (a) of this section.

(i) *Notice and hearing*. SBA will serve upon the Management Official and the SBA Supervised Lender written notice of intention to remove that includes a statement of the facts constituting the grounds and the date, time, and place for an administrative hearing. The administrative hearing will be held between 30 and 60 days from the date notice is served, unless an earlier or later date is set at the request of the Management Official for good cause shown or at the request of the Attorney General. The hearing will be conducted in accordance with 5 U.S.C. 554–557, 15 U.S.C. 650 and applicable sections of part 134 of this chapter. Failure of the Management Official to appear at the administrative hearing will constitute consent to the removal order. SBA will serve on the SBA Supervised Lender a copy of each notice that is served on a Management Official.

(ii) *Suspension from office or prohibition in participation, pending removal*. The suspension or prohibition will take effect upon service of intention to remove the Management Official or such subsequent time as the Administrator or his/her delegate deems appropriate and serves notice. It will remain in effect pending the completion of the administrative proceedings to remove and until such time as either SBA dismisses the charges in the removal notice or, if an order to remove or prohibit participation is issued, until the effective date of an order to remove or prohibit. In the case of suspension or prohibition following criminal charges, it may remain in effect until the information, indictment, or complaint is finally disposed of, or until the suspension is terminated by SBA or by order of a district court. A Management Official may appeal to the appropriate federal district court for a stay of the suspension or prohibition pending completion of the administrative hearing not later than 10 days from the suspension or prohibition's effective date.

(iii) *Decision.* SBA may issue the order of removal if the Management Official consents or is convicted of the criminal charges and the judgment is not subject to further judicial review (not including writ of habeas corpus), or if upon a record of a hearing, SBA finds that any of the notice grounds have been established. After the hearing, in the latter case, and within 30 days after SBA has notified the parties that the case has been submitted for final decision, SBA will render a decision (which includes findings of fact upon which the decision is predicated) and issue and serve an order upon each party to the proceeding. The decision will constitute final agency action.

(iv) *Effective date and judicial review.* The removal order will take effect 30 days after date of service upon the SBA Supervised Lender and the Management Official except in case of consent which will be effective at the time specified in the order or in case of removal for conviction on criminal charges the order will be effective upon removal order service on the SBA Supervised Lender and the Management Official. The order will remain effective and enforceable, except to the extent it is stayed, modified, terminated, or set aside by Administrator or a reviewing court. The adversely affected party will have 20 days from the order issuance date to seek judicial review in the appropriate federal district court.

(4) *Receiverships, transfer of assets and servicing activities*. If SBA undertakes the appointment of a receiver for, or the transfer of assets or servicing rights of, an SBA Supervised Lender, SBA will follow the applicable procedures in 15 U.S.C. 650.

(5) *Civil penalties for report filing failure*. If SBA seeks to impose civil penalties against an SBA Supervised Lender for failure to file a report in accordance with SBA regulations or written directive, SBA will follow the procedures set forth for enforcement actions in § 120.465.

(c) *Additional procedures for certain enforcement actions against SBLCs. Capital directive*. (1) *Notice of intent to issue capital directive*. SBA will notify an SBLC in writing of its intention to issue a directive. The notice will state:

(i) Reasons for issuance of the directive and

(ii) The proposed contents of the directive.

(2) *Response to notice*. (i) An SBLC may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response must include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital requirement applicable to the SBLC. The response must be in writing and delivered to the SBA within 30 days after the date on which the SBLC received the notice. In its discretion, SBA may extend the time period for good cause. SBA may shorten the 30-day time period:

(A) When, in the opinion of SBA, the condition of the SBLC so requires, provided that the SBLC will be informed promptly of the new time period;

(B) With the consent of the SBLC; or

(C) When the SBLC already has advised SBA that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days or such other time period as may be specified by SBA will constitute a waiver of any objections to the proposed capital directive.

(3) *Decision*. After the closing date of the SBLC's response period, or receipt of the SBLC's response, if earlier, SBA may seek additional information or clarification of the response. Thereafter, SBA will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

(4) *Issuance of a capital directive.* (i) A capital directive will be served by delivery to the SBLC. It will include, or be accompanied by, a statement of reasons for its issuance.

(ii) A capital directive is effective immediately upon its receipt by the

SBLC, or upon such later date as may be specified therein, and will remain effective and enforceable until it is stayed, modified, or terminated by SBA.

(5) *Reconsideration based on change in circumstances.* Upon a change in circumstances, an SBLC may request SBA to reconsider the terms of its capital directive or may propose changes in the plan to achieve the SBLC's applicable minimum capital requirement. SBA also may take such action on its own initiative. SBA may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan will continue in full force and effect.

(6) *Relation to other administrative actions.* A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings. SBA also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an SBLC's failure to achieve or maintain the applicable minimum capital requirement.

(7) *Appeals.* The capital directive constitutes a final agency action. An SBLC may appeal the final agency decision only in the appropriate federal district court.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–29197 Filed 12–10–08; 8:45 am]

BILLING CODE 8025–01–P

Federal Register

Thursday,
December 11, 2008

Part III

The President

Executive Order 13481—Providing An Order of Succession Within the Department of Justice

Memorandum of December 9, 2008—Designation of Officers of the Pension Benefit Guaranty Corporation to Act as Director of the Pension Benefit Guaranty Corporation

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Presidential Documents

Title 3—

The President

Executive Order 13481 of December 9, 2008

Providing An Order of Succession Within the Department of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of section 2 of this order, the following officers, in the order listed, shall act as and perform the functions and duties of the office of Attorney General, during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and the officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

(a) United States Attorney for the District of Maryland;

(b) United States Attorney for the Southern District of Alabama; and

(c) United States Attorney for the Northern District of Georgia.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this order in an acting capacity, by virtue of so serving, shall act as Attorney General pursuant to this order.

(b) No individual listed in section 1 shall act as Attorney General unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Attorney General.

Sec. 3. This order supersedes the President's Memorandum for the Attorney General of December 8, 2006 (Designation of Officers of the Department of Justice).

Sec. 4. This order is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
Washington, December 9, 2008.

[FR Doc. E8–29564
Filed 12–10–08; 2:00 pm]
Billing code 3195–W9–P

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Presidential Documents

Title 3—

The President

Memorandum of December 9, 2008

Designation of Officers of the Pension Benefit Guaranty Corporation To Act As Director of the Pension Benefit Guaranty Corporation

Memorandum for the Director of the Pension Benefit Guaranty Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, the following officials of the Pension Benefit Guaranty Corporation, in the order listed, shall act as and perform the functions and duties of the office of the Director of the Pension Benefit Guaranty Corporation (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Deputy Director for Operations;

(b) Chief Management Officer;

(c) Chief Operating Officer; and

(d) General Counsel.

Sec. 2. *Exceptions.* a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, it agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

Sec. 4. You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, December 9, 2008.

[FR Doc. E8–29567
Filed 12–10–08; 12:00 pm]
Billing code 7709–01–M

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FEDERAL HOUSING FINANCING AGENCY

Affordable Housing Program Amendments

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