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

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS-FV-08-0066; FV08-930-2 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Change to Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the fiscal period prescribed under the tart cherry marketing order (order). The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). The fiscal period is changed from July 1 through June 30 to October 1 through September 30. This will improve the administration and the fiscal operation of the Board.

DATES: Effective date December 16, 2008. Comments received by February 13, 2009 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular

business hours or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734-5243; Fax: (301) 734-5275 or E-mail at Patricia.Petrella@usda.gov or Kenneth.Johnson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on

the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This action changes the fiscal period from July 1 through June 30 to October 1 through September 30. This action was unanimously recommended by the Cherry Industry Administrative Board (Board) at its June 19, 2008 meeting.

Section 930.7 of the order currently defines fiscal period as the 12-month period beginning on July 1 of any year and ending on June 30 of the following year or such other period as the Board, with approval of the Secretary, may establish.

According to the Board, the July through June fiscal period is inconsistent with needs of the industry, the Board's changed activities, and its cash flow.

The Board's and industry's activities have changed since the order's inception. Initially, Board's activities consisted primarily of the administrative duties associated with the marketing order, and relatively moderate expenditures were incurred for that purpose. The Board and industry's focus has recently changed to include promotional activities, and annual expenditures have increased significantly. The majority of the Board's expenditures are now used on promotional activities. Changing the Board's fiscal period allows the Board to better coordinate with its promotion activities and to make its fiscal cycle consistent with its major program expenditures.

In addition, changing the fiscal period brings the Board's collection of assessment revenues into line with program expenses. Handler assessments, which fund program expenses, are collected in October. This changed fiscal period thus enables the Board to receive its funding at the beginning of its fiscal period so the revenue to fund program expenses is available when needed. The Board believes it can increase its operational efficiency by making its fiscal period consistent with its promotional activities. An October through September fiscal period also brings revenue collection in line with funding needs of the program. Therefore, changing the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

A majority of the producers and handlers are considered small entities under SBA's standards. There were 37 handlers operating during the 2007–2008 season, the last completed crop year. Eight of these handlers, representing 20.5 percent of all handlers and 69.3 percent of production, processed more than 10 million pounds of cherries. Six handlers, representing 15.4 percent of all handlers and 16.9 percent of production, processed more than 5 million pounds and less than 10 million pounds of cherries. Seven handlers, representing 17.9 percent of all handlers and 9.6 percent of production, processed between 2.1 and 5 million pounds of cherries. The 16 remaining handlers, representing 43.2 percent of all handlers and 4.1 percent of production, processed less than 2 million pounds of cherries. Handlers accounting for 10 million pounds or more cherries would be classified as large businesses. Thus, a majority of tart cherry handlers (79.5 percent by number) could be classified as small entities.

During the 3-year period 2005–2007, production of tart cherries averaged 259 million pounds. Dividing the total production by the average number of growers, the average grower produces about 386,000 pounds of tart cherries

annually. With grower returns of about 25 cents per pound, average annual revenues would be \$96,497. At 25 cents per pound, a grower would have to produce 3 million pounds of tart cherries to reach the \$750,000 receipt threshold to be classified as a large entity using the SBA definition for agricultural producers. According to Cherry Industry Administrative Board data, not more than 9 growers (1 percent of the average number of growers) produced 3 million pounds or more of tart cherries during the 2005–2007 crop years, and those growers would be classified as large. The remaining 99 percent of growers would be classified as small entities.

This action changes the fiscal period from July 1 through June 30 to October 1 to through September 30. This action is administrative in nature and will have little impact on producers or handlers. It will allow the Board to increase its operational efficiency by making its fiscal period consistent with its promotional activities. It will also bring revenue collection in line with funding needs of the program. Changing the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

One alternative to this action would be to continue the status quo. However, this would not improve program administration inconsistencies in the Board's fiscal operations.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 19 members, of which 18 members are growers and handlers and one represents the public. Also, the Board has a number of appointed

committees to review certain issues and make recommendations. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetch>

TemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changing the fiscal period prescribed under the tart cherry marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule has little or no effect on industry operations; (2) this rule improves program administration and fiscal operations of the Board; (3) the Board unanimously recommended the change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

- 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

- 2. Section 930.107 is added to read as follows:

§ 930.107 Fiscal period.

Pursuant to § 930.7, fiscal period shall mean the period beginning October 1 and ending September 30 of each year.

Dated: December 9, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29599 Filed 12–12–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 946**

[Docket No. AMS–FV–08–0036; FV08–946–1 FIR]

Irish Potatoes Grown in Washington; Relaxation of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule relaxing the size requirement prescribed under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule continues in effect the action that relaxed the minimum size required for all fresh market red, yellow fleshed, and white types of potatoes from 1 inch (25.4 mm) to ¾ inch (19.1 mm) in diameter, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This rule also continues in effect the action that relaxed the minimum size requirement from July 1 through September 30 of each year for imported red-skinned, round type potatoes under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. The Committee recommended this change in response to the recently revised U.S. Standards

for Grades of Potatoes which added a definition for Creamer potatoes. This change is intended to provide potato handlers with greater marketing flexibility, growers with increased returns, consumers with a greater supply of small potatoes, and to bring the section 8e potato import regulation into conformity with the marketing order.

DATES: *Effective Date:* January 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: Teresa.Hutchinson@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the same or comparable requirements established for that particular area. The requirements for red-skinned, round type potatoes imported from July 1 through September 30 are based on the Washington potato marketing order requirements.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that relaxed the size required for all fresh market red, yellow fleshed, and white types of potatoes produced in Washington State from 1 inch (25.4 mm) to ¾ inch (19.1 mm) minimum, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, growers with increased returns, and consumers with a greater supply of small potatoes. This rule also continues in effect the action that relaxed the minimum size requirement from July 1 through September 30 of each year for imported red-skinned, round type potatoes under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. This rule will not affect the current import requirements for all other round type or long type potatoes.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes the regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or

containers, which may be used in the packing or handling of potatoes, or both. Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal or Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 946.336 of the order's administrative rules and regulations prescribes the quality, size, maturity, cleanness, pack, and inspection requirements for fresh market Washington potatoes. Section 946.336(a)(2) prescribes the size requirements. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

During a video conference meeting held on April 16, 2008, with a follow-up mail vote, the Committee unanimously recommended changing the minimum size requirement for all U.S. No. 1 grade fresh market red, yellow fleshed, and white types of potatoes produced under the order from 1 inch to $\frac{3}{4}$ inch in diameter.

The Committee recommended this change in response to the recently revised U.S. Standards for Grades of Potatoes (Standards) which became effective on April 21, 2008 (73 FR 15051, March 21, 2008). The revised Standards added a definition for Creamer potatoes. The revised Standards define the Creamer size designation as $\frac{3}{4}$ inch minimum diameter and $1\frac{5}{8}$ inch maximum diameter with no minimum or maximum weight.

Before the Standards were revised to include a Creamer size designation, various states developed their own standards for Creamer potatoes in an attempt to meet the increasing consumer demand for small potatoes. The Washington potato industry had previously considered Creamer potatoes to have a 1 inch minimum diameter. The Committee recommended reducing the minimum diameter to $\frac{3}{4}$ inch so that the handling regulation would correspond with the revised Standards and to ensure that the industry was being responsive to the desires of consumers. The Committee also believes that inconsistency between what was marketed in Washington as Creamer potatoes and what the Standards specify as Creamer potatoes would have caused confusion in the marketplace.

Within the past several years, consumer demand has increased for small potatoes which often command

premium prices. Decreasing the minimum size requirement from 1 inch to $\frac{3}{4}$ inch will help handlers in Washington meet the needs of their customers.

Committee statistics show that approximately 25 percent (2,483,219 hundredweight) of fresh market Washington potatoes (9,932,874 hundredweight) are red, yellow fleshed and white types of potatoes. The relaxation in the size requirement is expected to increase the volume of red, yellow fleshed, and white types of potatoes that meet minimum size requirements. Shipping a larger portion of the crop to market would help meet consumer demand and is expected to increase returns to growers.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under marketing orders No. 945 (Idaho-Eastern Oregon potatoes), No. 948 (Colorado potatoes, Area No. 2 and Area No. 3), No. 946 (Washington potatoes), and No. 953 (Southeastern potatoes) since the marketing orders were established. Section 980.1 of the vegetable import regulations specifies that import requirements for potatoes are to be based on the seasonal categories of potatoes produced in all marketing order areas. In that regard, imported red-skinned, round type potatoes must meet the requirements of the Washington potato marketing order during the months of July through September and the Area No. 2 Colorado potato marketing order during the months of October through the following June. This rule will not affect the current import requirements for all other round type or long type potatoes.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly,

AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products.

Currently, there are approximately 45 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 267 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2006–2007 marketing year, 9,932,874 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market by 43 handlers, according to Committee data. The Committee reports that an industry consensus estimate of an average fresh potato f.o.b. price is \$8.45 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average f.o.b. price of \$8.45 yields a handler-level fresh market crop value of \$83.933 million. Dividing \$83.933 million by 43 handlers gives an average annual sales value per handler estimate of about \$1.952 million. The Committee estimates that 41, or about 95 percent of these 43 handlers, had annual receipts of less than \$7,000,000.

A comparable computation can be made to estimate annual average revenue per producer. Based on information provided by the National Agricultural Statistics Service, the 2006 season average producer price for Washington potatoes was \$6.25 per hundredweight. Multiplying the 2006–2007 fresh shipments of 9,932,874 hundredweight by the average producer price of \$6.25 provides a producer-level fresh market crop value of \$62.08 million. Dividing \$62.08 million by 267 Washington potato producers yields an average annual fresh market sales value per producer of approximately \$232,500.

In view of the foregoing, it can be concluded that the majority of the

Washington potato producers and handlers may be classified as small entities. Although it is not known how many importers of potatoes may be classified as small entities, we believe that many of the importers of potatoes can be classified as such.

This rule continues in effect the action that decreased the minimum size required for all fresh market red, yellow fleshed, and white types of potatoes produced under the order from 1 inch to $\frac{3}{4}$ inch in diameter, if they otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers with the ability to respond to the consumer demand for small potatoes. As provided under section 8e of the Act, this change will also apply to all imported red-skinned, round type potatoes between July 1 through September 30 of each year. While no change will be required in the language of § 980.1, all imported red-skinned, round type potatoes from July 1 through September 30 will be required to meet the minimum size requirement of $\frac{3}{4}$ inch in diameter.

The authority for the grade and size requirements is provided in § 946.52 of the order. Section 946.336(a)(2) of the order's administrative rules and regulations prescribes the size requirement. Relevant import regulations are contained in § 980.1 and § 980.501 of the vegetable import regulations.

Regarding the impact of this rule on affected entities, relaxing the size required for these potatoes is expected to benefit handlers, importers and growers. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. By relaxing the minimum size required for these potatoes, a greater quantity of potatoes will meet the order's handling regulations and the import regulations. This could translate into an increased market for small potatoes and greater returns for handlers, importers, and growers.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Washington. The Committee believes that a relaxation in the size requirement will increase the available supply of small potatoes. The small potato market is a minor segment of the Washington potato market. As such, the Committee believes that these small potatoes do not compete directly with most of the fresh market potatoes and that this action will not adversely affect the overall Washington potato market.

By providing Washington handlers the flexibility to pack the smaller red, yellow fleshed, and white types of potatoes, the Committee believes the industry will remain competitive in the marketplace. The Creamer potato market is a premium market and this action is expected to further increase sales of Washington Creamer potatoes to benefit the Washington potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

The Committee discussed several alternatives to this recommendation, including not changing the minimum size requirement. However, the Committee believes that it is important that the Washington potato handling regulations be consistent with the revised Standards to reduce confusion during the inspection and marketing of these types of potatoes. The Committee also determined that relaxing the minimum size requirement for these potatoes will provide the greatest benefit to the industry by augmenting the developing market for small potatoes and increasing grower returns.

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

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the April 16, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, the World Trade Organization and known importers of potatoes will be notified of this action.

An interim final rule concerning this action was published in the **Federal Register** on September 10, 2008. Copies of this rule were mailed by Committee staff to all Committee members and potato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal

Register. That rule provided for a 60-day comment period which ended November 10, 2008. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (73 FR 52573, September 10, 2008) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 946 which was published at 73 FR 52573 on September 10, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

James E. Link,
Administrator, Agricultural Marketing Service.

[FR Doc. E8–29600 Filed 12–12–08; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS–FV–08–0056; FV08–987–1 FIR]

Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a

final rule, without change, an interim final rule which decreased the assessment rate established for the California Date Administrative Committee (Committee) for the 2008–09 and subsequent crop years from \$0.75 to \$0.60 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* January 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: Terry.Vawter@usda.gov or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2008–09 and subsequent crop years from \$0.75 per to \$0.60 per hundredweight of dates.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee’s needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2008, and unanimously recommended 2008–09 expenditures of \$176,384 and an assessment rate of \$0.60 per hundredweight of California dates. In comparison, last year’s budgeted expenditures were \$209,182. The assessment rate of \$0.75 is \$0.15 lower than the rate previously in effect. The Committee recommended a lower assessment rate because the 2007 crop was larger than expected, resulting in excess assessment income and thus a

larger reserve. Income generated through the lower assessment rate combined with reserve funds should be sufficient to cover anticipated 2008–09 expenses.

Section 987.72(c) states that the reserve may not exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years. With the larger 2007 crop, the reserve at the end of the 2007–08 crop year is projected to exceed this limit. Excess assessment funds will be refunded to handlers to reduce the reserve and bring it in line with order requirements.

Proceeds from sales of cull dates are deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee’s expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the Committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the Committee from the disposal of surplus dates. For the 2008–09 crop year, the Committee estimated that \$4,500 from the surplus account would be needed to temporarily defray expenses incurred in disposing of surplus dates.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$66,384 for general and administrative programs, \$82,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$10,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year. By comparison, expenditures recommended by the Committee for the 2007–08 crop year include \$87,312 for general and administrative programs, \$67,870 for promotional programs, \$24,000 for marketing and media consulting, \$5,000 for moving expenses, and \$5,000 for updating marketing materials. The Committee budgeted \$20,000 as a contingency reserve for other marketing and promotion projects.

The assessment rate of \$0.60 per hundredweight of assessable dates was derived by applying the following formula where:

A = 2007–08 estimated reserve on 09/30/08 (\$134,757);

B = 2008–09 estimated reserve on 10/01/09 (\$78,996);

C = 2008–09 expenses (\$176,384);
 D = Cull Surplus Fund (\$4,500);
 E = Assessment Refund (\$15,877); and
 F = 2008–09 expected shipments (22,000,000 pounds).

$$[(B - A + C - D + E) / F] * 100.$$

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–09 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 85 producers of dates in the production area and 9 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the 2006 crop year shows that about 3.12 tons, or 6,240 pounds, of

dates were produced per acre. The 2006 grower price published by the NASS was \$1,320 per ton, or \$.66 per pound. Thus, the value of date production per acre in 2006 averaged about \$4,118 (6,240 pounds times \$.66 per pound). At that average price, a producer would have to farm over 182 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,118 per acre equals 182 acres). According to Committee staff, the majority of California date producers farm less than 182 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. The majority of handlers of California dates may also be considered small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent crop years from \$0.75 to \$0.60 per hundredweight of dates handled. The Committee unanimously recommended 2008–09 expenditures of \$176,384 and an assessment rate of \$0.60 per hundredweight of dates, which is \$0.15 lower than the 2007–08 rate, previously in effect. The quantity of assessable dates for the 2008–09 crop year is estimated at 22,000,000 pounds. Thus, the \$0.60 per hundredweight assessment rate should provide \$132,000 in assessment income and, with reserve funds of \$39,884 and the \$4,500 contribution from the surplus program, will be adequate to meet the 2008–09 crop year expenses.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$66,384 for general and administrative programs, \$82,000 for promotional programs, and \$28,000 for marketing and media consulting. The Committee also budgeted \$10,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

The Committee recommended a lower assessment rate because the 2007 crop was larger than expected, resulting in excess assessment income and thus a larger reserve. Income generated through the lower assessment rate combined with reserve funds should be sufficient to cover anticipated 2008–09 expenses.

The Committee reviewed and unanimously recommended 2008–09 crop year expenditures of \$176,384. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Marketing Subcommittee. Alternative expenditure levels were an option available to the Committee, but given the extra assessment income

generated from the larger-than-expected 2007–08 crop, it was ultimately determined that a \$176,384 budget would be appropriate. The assessment rate of \$0.60 per hundredweight of dates was then derived, based upon the Committee's estimates of the incoming reserve, income, and anticipated expenses.

According to the NASS, the season average grower price for 2007 crop dates is projected at \$2,290 per ton, or \$114 per hundredweight. No official NASS estimate is available yet for 2008. The average grower price for 2005–07 is \$1,953 per ton, or \$98 per hundredweight.

To calculate the percentage of grower revenue represented by the assessment rate for 2007, the assessment rate of \$0.75 (per hundredweight) is divided by the estimated average grower price. This results in estimated assessment revenue for the 2007–08 crop year as a percentage of grower revenue of 0.66 percent (\$0.75 divided by \$114 per hundredweight). As previously mentioned, NASS data for 2008 is not yet available. However, applying the same calculations above using the average grower price for 2005–07 would result in estimated assessment revenue as a percentage total grower revenue of .61 percent for the 2008–09 crop year (\$0.60 divided by \$98 per hundredweight). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2008 (73 FR 50188). Copies of that rule were also mailed or sent via facsimile to all date handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 27, 2008, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 987 which was published at 73 FR 50188 on August 26, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29597 Filed 12–12–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. AMS–FV–08–0060; FV08–993–1 FIR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Prune Marketing Committee (Committee) for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes. The Committee locally administers the marketing order which regulates the handling of dried prunes in California. Assessments upon dried prune handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* January 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Maureen Pello, Assistant Regional Manager, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: Maureen.Pello@usda.gov or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes handled.

The California dried prune marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate

that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2008, and unanimously recommended an assessment rate of \$0.30 per ton of salable dried prunes and expenditures totaling \$51,587 for the 2008–09 crop year. In comparison, last year's approved expenses were \$102,523. The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate previously in effect.

The Committee recommended a lower assessment rate because the 2008–09 crop is estimated at 120,000 tons, which is over 35,000 tons larger than the 2007–08 crop. Income generated from the lower assessment rate combined with excess assessment income carried into the new crop year should be adequate to cover the Committee's 2008–09 expenses.

The Committee's budget of expenses of \$51,587 includes a decrease in personnel expenses, and a slight decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the California Dried Plum Board (CDPB). Based on the Committee's reduced activities in recent years, it is funding only 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. For the 2007–08 crop year, the Committee's budgeted expenses were \$50,505 for salaries and benefits, \$15,075 for operating expenses, and \$36,943 for contingencies.

The assessment rate recommended by the Committee was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2008–09 crop year, and estimated income from other sources such as interest. Dried prune

production for the year is estimated to be 120,000 salable tons, which should provide \$36,000 in assessment income at \$0.30 per ton of salable dried prunes. Income derived from handler assessments, plus excess funds from the 2007–08 crop year should be adequate to cover budgeted expenses.

The Committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2007–08 crop year (currently estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committees' 2008–09 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the

marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those whose annual receipts are less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Committee data indicates that about 64 percent of the handlers ship under \$6,500,000 worth of dried prunes. Dividing the average prune crop value for 2007–08 reported by the National Agricultural Statistics Service (NASS) of \$111,650,000 by the number of producers (800) yields an average annual producer revenue estimate of about \$139,562. Based on the foregoing, the majority of handlers and dried prune producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent crop years from \$0.60 to \$0.30 per ton of salable dried prunes.

The Committee met on June 26, 2008, and unanimously recommended estimated expenses for 2008–09 of \$51,587 and a decreased assessment rate of \$0.30 per ton of salable dried prunes. The Committee's recommended budget was based on a decrease in personnel expenses and a decrease in operating expenses. Combined salaries and expenses are almost 50 percent lower than last year, or about \$26,248. The Committee also included \$12,446 for contingencies. Most of the Committee's expenses reflect its portion of the joint administrative costs of the Committee and the CDPB. Based on the Committee's reduced activities in recent years, it is funding only 5 percent of the shared expenses of the two programs. This level was reduced from last year's level of 10 percent to reflect a more accurate figure. The Committee believes that extra assessment income carried in from the 2007 crop year, plus interest income and 2008 assessment income, is adequate to cover its estimated expenses of \$51,587.

The assessment rate of \$0.30 per ton of salable dried prunes is one-half of the rate previously in effect. The quantity of salable dried prunes for the 2008–09 crop year is currently estimated at 120,000 tons, compared to 95,000 tons of salable dried prunes for the 2007–08 crop year.

The major expenditures recommended by the Committee for the 2008–09 crop year include \$26,248 for salaries and benefits, \$12,893 for operating expenses, and \$12,446 for contingencies. Budgeted expenses for these items in 2007–08 were \$50,505 for salaries and benefits, \$15,075 for

operating expenses, and \$36,943 for contingencies.

The 2008–09 assessment rate was derived by considering the handler assessment revenue needed to meet anticipated expenses, the estimated salable tons of California dried prunes, excess funds carried forward into the 2008–09 crop year, and estimated income from other sources such as interest. Therefore, the Committee recommended an assessment rate of \$0.30 per ton of salable dried prunes.

Prior to arriving at its budget of \$51,587, the Committee considered information from various sources, including the Committee's Executive Subcommittee. The Executive Subcommittee reviewed the administrative expenses shared between the Committee and the CDPB in recent years. Accordingly, the Executive Subcommittee recommended reducing the share of expenses allocated to the Committee from 10 to 5 percent. The Executive Subcommittee then recommended the \$51,587 budget and \$0.30 per ton assessment rate to the Committee. The Committee recommended the same budget and assessment rate to USDA.

Section 993.81(c) of the order provides the Committee the authority to use excess assessment funds from the 2007–08 crop year (estimated at \$15,487) for up to 5 months beyond the end of the crop year to meet 2008–09 crop year expenses. At the end of the 5 months, the Committee either refunds or credits excess funds to handlers.

To calculate the percentage of grower revenue represented by the assessment rate for 2007, the assessment rate of \$0.60 per ton is divided by the estimated average grower price (according to the NASS). This results in estimated assessment revenue for the 2007–08 crop year as a percentage of grower revenue of .05 percent (\$0.60 divided by \$1,450 per ton). NASS data for 2008 is not yet available. However, applying the same calculations above using the average grower price for 2005–07 would result in estimated assessment revenue as a percentage of total grower revenue of .02 percent for the 2008–09 crop year (\$0.30 divided by \$1,437 per ton). Thus, the assessment revenue should be well below 1 percent of estimated grower revenue in 2008.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition,

the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 2008 (73 FR 50188). Copies of that rule were also mailed or sent via facsimile to all prune handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 27, 2008, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Prunes, Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published at 73 FR 50188 on August 26, 2008, is adopted as a final rule without change.

Dated: December 8, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–29598 Filed 12–12–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1076; Airspace Docket No. 08–ANE–102]

Amendment to Class E Airspace; Rutland, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action revises the Class E Airspace at Rutland-Southern Vermont Regional (RUT); Rutland, VT to provide adequate controlled airspace for those aircraft using Instrument Approach Procedures to the airport. The IRA NDB has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed. This rule also imparts a technical amendment to change the name of the airport from Rutland State Airport to Rutland-Southern Vermont Regional. This action will enhance the safety and airspace management around Rutland-Southern Vermont Regional.

DATES: Effective 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–1076; Airspace Docket No. 08–ANE–102, at the beginning of your

comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT:

Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305-5610, Fax 404-305-5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking

action. An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-1076; Airspace Docket No. 08-ANE-102." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 revises Class E Airspace at Rutland, VT by modifying the Rutland-Southern Vermont Regional (RUT) Class E airspace to provide adequate Class E airspace for IFR operations at Rutland, VT. The IRA NDB has been decommissioned and in reviewing the legal description at Rutland-Southern Vermont Regional, the FAA determined that the Class E5 airspace should be redefined in order to provide adequate controlled airspace for aircraft executing Instrument Approach Procedures to Rutland-Southern Vermont Regional. This action changes the name of the airport from Rutland State Airport to Rutland-Southern Vermont Regional. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9S, signed October 3, 2008 and effective October 31, 2008, which is incorporated

by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this Final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Rutland, VT.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

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

* * * * *

ANE VT E5 Rutland, VT [REVISED]

Rutland-Southern Vermont Regional, VT
(Lat. 43°31'48" N., long 72°56'59" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Rutland-Southern Vermont Regional (RUT) and within 1.5 miles each side of the 001° bearing from Rutland-Southern Vermont Regional extending from the 6.6-mile radius to 9.0 miles northeast of the airport and within 1.5 miles each side of the 182° bearing from Rutland-Southern Vermont Regional extending from the 6.6 mile radius to 9.3 miles southwest of the airport.

* * * * *

Issued in College Park, Georgia on
November 20, 2008.

Barry A. Knight,

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

[FR Doc. E8–29268 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1073; Airspace
Docket No. 08–AEA–28]

Amendment to Class E Airspace; Summerville, WV

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Direct final rule, request for
comments.

SUMMARY: This action revises the Class E Airspace at Summerville Airport (SXL); Summerville, WV to provide for adequate controlled airspace for those

aircraft using Instrument Approach Procedures to the airport. The Nicholas NDB has been decommissioned and all reference to the NDB in the Summerville Class E5 airspace description is being removed. Additionally, the FAA determined that the Class E airspace should be revised to provide the appropriate controlled airspace for the Instrument Approach Procedures to SXL. This action will enhance the safety and airspace management around the Summerville Airport.

DATES: Effective 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–1073; Airspace Docket No. 08–AEA–28, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT:
Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary

to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking action. An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/airports/airtraffic/air_traffic/publications/airspace_amendments. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must

submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-1073; Airspace Docket No. 08-AEA-28." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 revises Class E Airspace at Summerville, WV by modifying the Summerville Class E airspace to provide adequate Class E airspace for IFR operations at Summerville, WV. The Nicholas NDB has been decommissioned and in reviewing the legal description at Summerville Airport, the FAA determined that the Class E5 airspace should be redefined in order to provide adequate controlled airspace for aircraft executing Instrument Approach Procedures to Summerville Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9S, signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this Final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Summerville, WV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

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

* * * * *

AEA WV E5 Summerville, WV [REVISED]

Summerville Airport, WV
(Lat. 38°13'54"N., long. 80°52'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Summerville Airport (SXL) and within 2 miles each side of the 037° bearing from the Summerville Airport extending from the 6.3-mile radius to 11.3 miles northeast of the airport and within 1.8 miles each side of the 217° bearing from the Summerville Airport extending from the 6.3 mile radius to 8.5 miles southwest of the Summerville Airport.

* * * * *

Issued in College Park, Georgia, on November 19, 2008.

Barry A. Knight,

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

[FR Doc. E8-29266 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-1168; Airspace Docket No. 08-ASO-19]

Establishment of Class E Airspace; Clewiston, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Clewiston, FL. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Airglades Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Airglades Airport, Clewiston, FL.

DATES: Effective 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; *Telephone:* 1-800-647-5527; *Fax:* 202-493-2251. You must identify the Docket Number FAA-2008-1168; Airspace Docket No. 08-ASO-19, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT:

Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/

publications/airspace amendments. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-1168; Airspace Docket No. 08-ASO-19." The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Clewiston, FL, to provide controlled airspace required to support the Standard Instrument Approach Procedures (SIAPs) that have been developed for Airglades Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Clewiston, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace Areas
Extending Upward From 700 Feet or More
Above the Surface of the Earth.*

* * * * *

ASO FL E5 Clewiston, FL [NEW]

Airglades Airport, FL
(Lat. 26°44'07" N., long. 81°03'04" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Airglades Airport.

* * * * *

Issued in College Park, Georgia, on
November 21, 2008.

Mark D. Ward,

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

[FR Doc. E8-29269 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-1094; Airspace
Docket No. 08-ASO-18]

**Establishment of Class E Airspace;
Russellville, AL**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Direct final rule; request for
comments.

SUMMARY: This action establishes Class E Airspace at Russellville, AL. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Russellville Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Russellville Municipal Airport, Russellville, AL.

DATES: Effective 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before January 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation,

Docket Operations, West Building
Ground Floor, Room W12-140, 1200
New Jersey, SE., Washington, DC
20590-0001; Telephone: 1-800-647-
5527; Fax: 202-493-2251. You must
identify the Docket Number FAA-2008-
1094; Airspace Docket No. 08-ASO-18,
at the beginning of your comments. You
may also submit and review received
comments through the Internet at
<http://www.regulations.gov>.

You may review the public docket
containing the rule, any comments
received, and any final disposition in
person in the Dockets Office (see
ADDRESSES section for address and
phone number) between 9 a.m. and 5
p.m., Monday through Friday, except
Federal Holidays. An informal docket
may also be examined during normal
business hours at the office of the
Eastern Service Center, Federal Aviation
Administration, Room 210, 1701
Columbia Avenue, College Park, Georgia
30337.

FOR FURTHER INFORMATION CONTACT:

Melinda Giddens, Operations Support
Group, Eastern Service Center, Federal
Aviation Administration, P.O. Box
20636, Atlanta, Georgia 30320;
telephone (404) 305-5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this
regulation will not result in adverse or
negative comments, and, therefore,
issues it as a direct final rule. The FAA
has determined that this rule only
involves an established body of
technical regulations for which frequent
and routine amendments are necessary
to keep them operationally current.
Unless a written adverse or negative
comment or a written notice of intent to
submit an adverse or negative comment
is received within the comment period,
the regulation will become effective on
the date specified above. After the close
of the comment period, the FAA will
publish a document in the **Federal
Register** indicating that no adverse or
negative comments were received and
confirming the effective date. If the FAA
receives, within the comment period, an
adverse or negative comment, or written
notice of intent to submit such a
comment, a document withdrawing the
direct final rule will be published in the
Federal Register, and a notice of
proposed rulemaking may be published
with a new comment period.

Comments Invited

Although this action is in the form of
a direct final rule, and was not preceded
by a notice of proposed rulemaking,
interested persons are invited to

comment on this rule by submitting
such written data, views, or arguments
as they may desire. An electronic copy
of this document may be downloaded
from and comments may be submitted
and reviewed at <http://www.regulations.gov>. Recently
published rulemaking documents can
also be accessed through the FAA's Web
page at http://www.faa.gov/airports/airtraffic/air_traffic/publications/airspace_amendments.
Communications should identify both
docket numbers and be submitted in
triplicate to the address specified under
the caption **ADDRESSES** above or through
the Web site. All communications
received on or before the closing date
for comments will be considered, and
this rule may be amended or withdrawn
in light of the comments received.

Comments are specifically invited on
the overall regulatory, economic,
environmental, and energy aspects of
the rule that might suggest a need to
modify the rule. Factual information
that supports the commenter's idea and
suggestions is extremely helpful in
evaluating the effectiveness of this
action and determining whether
additional rulemaking action would be
needed. All comments submitted will be
available, both before and after the
closing date for comments, in the Rules
Docket for examination by interested
persons. Those wishing the FAA to
acknowledge receipt of their comments
submitted in response to this rule must
submit a self-addressed, stamped
postcard on which the following
statement is made: "Comments to
Docket No. FAA-2008-1094; Airspace
Docket No. 08-ASO-18." The postcard
will be date stamped and returned to the
commenter.

The Rule

This amendment to Title 14, Code of
Federal Regulations (14 CFR) part 71
establishes Class E airspace at
Russellville, AL, to provide controlled
airspace required to support the
Approach Procedures (SIAPs) that have
been developed for Russellville
Municipal Airport. Designations for
Class E airspace areas extending upward
from 700 feet or more above the surface
of the earth are published in FAA Order
7400.9S, dated October 3, 2008, and
effective October 31, 2008, which is
incorporated by reference in 14 CFR
part 71.1. The Class E designations
listed in this document will be
published subsequently in the Order.

Agency Findings

The regulations adopted herein will
not have substantial direct effects on the
States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Russellville, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

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

* * * * *

ASO AL E5 Russellville, AL [NEW]

Russellville Municipal Airport, AL
(Lat. 34°26'42" N., long. 87°42'42" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Russellville Municipal Airport.

* * * * *

Issued in College Park, Georgia, on November 20, 2008.

Signed By:

Barry A. Knight,

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

[FR Doc. E8–29243 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 734, 736, 740, 742, 743, 745, 747, 754, 758, 764, 766, 768, 772, and 774

[Docket No. 0811171457–81460–01]

RIN 0694–AE49

Export Administration Regulations: Authority Citations Updates and Technical Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the authority citation paragraphs for 14 parts of the Export Administration Regulations to include citations to the most recent presidential notices that extend authority for those parts or to remove an outdated citation or both. This rule also updates addresses, telephone numbers, procedures and a definition, removes some potentially confusing language, makes a necessary conforming change to one Export Control Classification Number (ECCN) and restores some language that was dropped during a Code of Federal Regulations compilation. BIS is making these changes to clarify the regulations and to

provide accurate authority citations for the Code of Federal Regulations edition that is to be compiled as of January 1, 2009.

DATES: This rule is effective December 15, 2008.

FOR FURTHER INFORMATION CONTACT: William H. Arvin, Regulatory Policy Division, e-mail warvin@bis.doc.gov, telephone 202–482–2440.

SUPPLEMENTARY INFORMATION:

Background

This rule updates authority citation paragraphs and makes technical clarifications and revisions to the Export Administration Regulations as more fully described below.

Authority Citation Updates

Since 2001, the authority citations for all parts of the Export Administration Regulations except part 745 have changed annually as successive presidential notices have extended the emergency declared in Executive Order 13222 of August 17, 2001 (which continued the Export Administration Act (EAA) and the EAR in force upon expiration of the EAA). Most recently the notice of July 23, 2008 (73 FR 43603, July 25, 2008) extended this emergency until August 17, 2009. In addition, the authority citations for parts 730, 734, 736, 742, 744 and 745 of the EAR have changed annually as successive presidential notices have extended the emergency declared in Executive Order 12938—Proliferation of Weapons of Mass Destruction. Most recently the notice of November 10, 2008 (73 FR 67097, November 12, 2008) extended this emergency until November 14, 2009. This rule updates the authority citations paragraphs for parts 730, 734, 736, 742, 743, 745, 747, 754, 758, 764, 766, and 768 of the EAR to reflect the most recent applicable authority citations because authority citation paragraphs for those parts have not been updated by other EAR amendments. This rule also revises the authority citation paragraph for parts 740, 754 and 772 to remove one outdated citation. These revisions are needed so that the annual compilation of Title 15 of the Code of Federal Regulations as of January 1, 2009 will reflect current authority citations for all EAR parts.

Updated Address and Telephone Information

This rule updates the BIS office address and telephone number information in § 730.8(c).

Updated Display of Approved Information Collections

Supplement No. 1 to part 730 of the EAR contains a table displaying the control numbers, the titles and the references in the EAR of information collections contained in the EAR that have been approved by the Office of Management and Budget (OMB). This rule revises the title of the information collection identified by control number 0607-0152 to read "Automated Export System (AES) Program" to reflect the name change for that collection that OMB approved on November 5, 2008.

Updated Address and Procedure for Requests To Appoint a Technical Advisory Committee

Supplement No. 2 to part 730 sets forth certain provisions regarding BIS's technical advisory committees. This rule adds the title "Assistant Secretary for Export Administration" to the address to which requests to appoint a new technical advisory committee should be sent and removes the statement that such requests be sent via courier. These changes reflect BIS's actual practice regarding requests to appoint technical advisory committees.

Removal of Potentially Confusing Language Regarding De Minimis Content of Foreign Made Items

The Export Administration Regulations do not apply to most items that were produced and are located outside the United States and that contain no more than the "*de minimis*" level of U.S. origin content as set forth in § 734.4. As noted in § 732.2(d), this *de minimis* exclusion applies only to items that are not located in the United States. This rule removes § 734.3(b)(4), which could have been read as applying the *de minimis* exclusion to items in the United States. Section 734.3(b)(4) is also redundant to § 734.3(a)(3)(ii), indicating that the Regulations do apply to items that contain U.S. origin commodities, software or technology in quantities exceeding the *de minimis* levels.

Clarification of Procedure for Requests To Take an Action That Would Otherwise Be Prohibited by a Denial Order

Section 764.3(a)(2), among other things, describes the procedure for requesting authorization to take an action that would otherwise be prohibited by an order denying export privileges. Requests for such authorizations must be submitted to the Office of Exporter Services. This rule adds the main mailing address for that office and replaces the word "application" with the phrase "written

request" to emphasize the distinction between such requests and license applications.

Updated Definition of Export Administration Review Board

Section 772.1 contains definitions of terms that are used in the EAR. Prior to publication of this rule, one such definition "Export Administration Review Board," described that board in terms of its duties and members. However, the duties and membership of that board can change from time-to-time. This rule revises the definition to identify the Export Administration Review Board unambiguously in terms of the Executive Order that created it and the Executive Order that gives it a role in export licensing decisions. BIS has no power to alter the membership of this board as set by Executive Order.

Technical and Conforming Change to ECCN 1C202

On January 15, 1998, the heading of Export Control Classification Number 1C202 was revised to read in pertinent part "Alloys other than those controlled by 1C002.a.2.c or [1C002.a.2].d * * *." (63 FR 2475, January 15, 1998). Subsequently, ECCN 1C002 was revised to move the items controlled under paragraphs .a.2.c and .a.2.d to paragraphs .b.3 and .b.4, respectively (67 FR 462, January 3, 2002). However, the language in the heading of ECCN 1C202 (referencing the now revised ECCN 1C002) was not changed. This rule revises the pertinent language in the heading of ECCN 1C202 to read "Alloys other than those controlled by 1C002.b.3 or 1C002.b.4 * * *." thereby reflecting the intent of exclusionary language in the heading of ECCN 1C202 as originally adopted.

Correcting Header Language in Category 5, Part II of the Commerce Control List

The Commerce Control List contains headers at points in the text that identify the ten categories into which the CCL is divided and the five product groups that can appear within each category. Prior to publication of this rule, certain headers in Category 5, Part II did not follow the pattern for such headers that is used in the rest of the CCL. This rule makes editorial changes to conform to that pattern. Specifically, this rule: Adds the letter "A" to the header that identifies product group A—Systems, Equipment and Components; removes a misplaced (and duplicative) header for Category 5, Part 2; adds a previously omitted header for Category 5, Part II, Product Group B—Test, Inspection and Production Equipment; and adds the letter "E" to the header

that identifies product group E—Technology.

Restoring an ECCN Removed in Code of Federal Regulations Compilation

Export Control Classification Number (ECCN) 5B991 was created in 1998 (63 FR 2521, January 15, 1998). In 1999, BIS published two rules that revised Category 5 on the Commerce Control List.

The first such rule revised ECCNs 5A991, 5D001 and 5E001 but made no changes to 5B991 (64 FR 10861, March 5, 1999). The second such rule revised ECCNs 5A001, 5A991, 5B001, 5C001, and 5C991 but made no changes to ECCN 5B991 (64 FR 40106, July 23, 1999). BIS issued no other **Federal Register** notice changing Category 5, Part I of the Commerce Control List during calendar year 1999. Nevertheless, ECCN 5B991, which had been in the January 1, 1999 CFR compilation was not in the January 1, 2000 compilation (Compare 15 CFR Part 774, Supp. No. 1 (1999) to 15 CFR Part 774 (Supp. No. 1 (2000))). This rule restores ECCN 5B991, which appears to have been inadvertently omitted from the January 1, 2000 CFR compilation and has not appeared in the CFR since. This rule also replaces the phrase LVS: "\$1,000 for Syria; N/A to Iran" in the License Exception of ECCN 5B991 with "LVS: N/A" because any authorization to use License Exception LVS for shipments to Syria is precluded by BIS's General Order No. 2 of May 14, 2004 (15 CFR Part 736, Supp. No. 1) and the reference to Iran is merely a specific instance of the general principle set forth in § 740.3(a) of the EAR that License Exception LVS may be used only when identified by a stated value limit in the applicable ECCN. With the removal the value limit for Syria, there is no longer any stated value limit in ECCN 5B991 that would apply to any destination. Therefore, continued reference to Iran would be superfluous.

Rulemaking Requirements

1. This rule is not a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694-0088, which carries a burden hour estimate of 58 minutes to

prepare and submit form BIS-748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no change to the number of submissions or to the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For all provisions of this rule other than the revision it makes to ECCN 1C202, BIS finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary given that these revisions are not substantive changes to the EAR. These revisions are administrative in nature and do not affect the rights and obligations of the public. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. With respect to the revision that this rule makes to ECCN 1C202, the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a)(1). No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 736, 770 and 772

Exports.

15 CFR Parts 740, 747, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

15 CFR Part 768

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR parts 730-774) are amended as follows.

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR

35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. In § 730.8(c), revise the second sentence to read as follows:

§ 730.8 How to proceed and where to get help.

* * * * *

(c) * * * General information including assistance in understanding the EAR, information on how to obtain forms, electronic services, publications, and information on training programs offered by BIS, is available from the Office of Export Services at the following locations: Outreach and Educational Services Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room H1099D, Washington, DC 20230, Tel: (202) 482-4811, Fax: (202) 482-2927, and Bureau of Industry and Security, Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, CA 92660, Tel: (949) 660-0144, Fax: (949) 660-9347, and Bureau of Industry and Security, Western Regional Office, Northern California Branch, U.S. Department of Commerce, 160 W. Santa Clara Street, Suite 725, San Jose, CA 95113, Tel: (408) 998-8806, Fax: (408) 998-8677.

■ 3. In part 730, Supplement No. 1, revise the final entry in the table to read as follows:

Supplement No. 1 to Part 730—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

* * * * *

Collection No.	Title	Reference in the EAR
* * * * *		
0607-0152	Automated Export System (AES) Program	§§ 740.1(d), 740.3(a)(3), 752.7(b), 752.15(a), 754.2(h), 754.4(c), 758.1, 758.2 and 758.3 of the EAR.

■ 4. In Supplement No. 2 to part 730—Technical Advisory Committees revise the first sentence of paragraph (b)(1) to read as follows:

Supplement No. 2 to Part 730—Technical Advisory Committees

* * * * *

(b) * * *

(1) * * * Each request for the appointment of a TAC shall be submitted in writing to: Assistant Secretary for Export Administration, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230. * * *

* * * * *

PART 734—[AMENDED]

■ 5. The Authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

§ 734.4 [Amended]

■ 6. In § 734.4, remove paragraph (b)(4).

PART 736—[AMENDED]

■ 7. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

PART 740—[AMENDED]

■ 8. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 742—[AMENDED]

■ 9. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O.

13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

PART 743—[AMENDED]

■ 10. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 745—[AMENDED]

■ 11. The authority citation for part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

PART 747—[AMENDED]

■ 12. The authority citation for part 747 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 754—[AMENDED]

■ 13. The authority citation for part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 758—[AMENDED]

■ 14. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 764—[AMENDED]

■ 15. The authority citation for part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 16. In § 764.3, revise the sixth sentence of paragraph (a)(2) and add a

new sentence following the sixth sentence to read as follows:

§ 764.3 Sanctions.

(a) * * *

(2) * * * Authorization to engage in actions otherwise prohibited by a denial order may be given by the Office of Exporter Services after consultation with the Office of Export Enforcement upon a written request by a person named in the denial order or by a person seeking permission to deal with a named person. Submit such requests to: Bureau of Industry and Security, Office of Exporter Services, Room H 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

* * * * *

PART 766—[AMENDED]

■ 17. The authority citation for part 766 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 768—[AMENDED]

■ 18. The authority citation for part 768 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

PART 772—[AMENDED]

■ 19. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 20. In § 772.1, revise the definition of “Export Administration Review Board” to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations.

* * * * *

Export Administration Review Board—The body authorized by Executive Order 12002 as amended by Executive Orders 12755 and 13286. The Export Administration Review Board’s role in license application review is in accordance with Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117.

* * * * *

PART 774—[AMENDED]

■ 21. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C.

7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 22. In supplement No. 1 to part 774, Category 1, Export Control Classification Number 1C202, revise the heading to read as follows:

1C202 Alloys other than those controlled by 1C002.b.3 or 1C002.b.4 as follows (see List of Items Controlled)

* * * * *

■ 24. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part I—“Telecommunications”, immediately following the text of Export Control Classification Number 5B001 and immediately preceding the header that reads “C. Materials” add Export Control Classification Number 5B991 to read as follows:

5B991 Telecommunications test equipment, n.e.s.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry ...	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value
Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 25. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II “Information Security,” immediately following the end of Note 3, paragraph .d and immediately preceding Export Control Classification Number 5A002 revise the header that reads “Systems, Equipment and Components” to read “A. Systems, Equipment and Components”

■ 26. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II “Information Security,” immediately following Export Control Classification Number 5A002 and immediately preceding Export Control classification Number 5A992, remove the heading that reads “Part 2—Information Security.”

■ 27. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II—“Information Security,” immediately following Export Control Classification Number 5A992 and immediately preceding Export Control classification Number 5B002, insert a heading reading “B. Test, Inspection and Production Equipment.”

■ 28. In Supplement No. 1 to part 774, Category 5 “Telecommunications and Information Security”, Part II—“Information Security,” immediately following the text of Export Control Classification Number 5D992 and immediately preceding Export Control Classification Number 5E002 revise the header that reads “Technology” to read “E. Technology”.

Dated: December 8, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–29604 Filed 12–12–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9435]

RIN 1545–BH61

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code (Code). This action is necessary in light of amendments to section 355(b). These temporary regulations will affect corporations and their shareholders. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These final and temporary regulations are effective on *December 15, 2008*.

Applicability Date: For dates of applicability, see § 1.355–2T(i).

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 355 provides the rules for tax-free distributions of the stock of certain controlled corporations. Since 2006 Congress has enacted several amendments to section 355. See sections 202 and 507 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345); Division A, Section 410 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2963); Section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473, 2476) (Technical Corrections). Furthermore, the IRS and Treasury Department have issued proposed § 1.355–3 (72 FR 26012 (May 8, 2007), 2007–23 IRB 1357), which would provide guidance regarding satisfaction of the active trade or business (ATB) requirement of section 355(b).

Section 355(a) provides that, under certain circumstances, a corporation may distribute stock and securities in a corporation it controls to its shareholders and security holders without causing either the distributing corporation (distributing) or its shareholders and security holders to recognize income, gain, or loss. For this purpose, control is defined under section 368(c).

Sections 355(a)(1)(C) and 355(b)(1) generally require that distributing and the controlled corporation (controlled) each be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(A) provides that a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business.

Section 355(b)(2)(B) requires that the trade or business have been actively conducted throughout the five-year period ending on the date of the distribution (pre-distribution period). Section 355(b)(2)(C) provides that the trade or business must not have been acquired in a transaction in which gain or loss was recognized, in whole or in part (taxable transaction or taxable acquisition), within the pre-distribution period. Section 355(b)(2)(D) provides that control of a corporation that (at the time of acquisition of control) was conducting the trade or business must not have been directly or indirectly acquired by any distributee corporation or by distributing during the pre-distribution period in a taxable

transaction. For purposes of section 355(b)(2)(D), all distributee corporations that are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.

Section 355(b)(3)(A) provides that for purposes of determining whether a corporation meets the requirements of section 355(b)(2)(A), all members of such corporation's separate affiliated group (SAG) shall be treated as one corporation. Section 355(b)(3)(B) provides that for purposes of section 355(b)(3), the term *SAG* means, with respect to any corporation, the affiliated group that would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply. Section 355(b)(3)(C) provides that if a corporation became a SAG member as a result of one or more taxable transactions, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of section 355(b)(2) as acquired in a taxable transaction. Section 355(b)(3)(A) through (C) are collectively referred to in this preamble as the SAG regime. In addition, for purposes of this preamble, the term *DSAG* means the SAG of which distributing is the common parent, *CSAG* means the SAG of which controlled is the common parent, and generally the "SAG" of a corporation means the SAG of which such corporation is the common parent. In addition, throughout this preamble, references to *DSAG* and *CSAG* include a reference to distributing and controlled, respectively, where such respective corporation is not the common parent of a SAG (for example, such corporation has no subsidiaries).

Section 355(a)(3)(B) provides that for purposes of section 355 (other than section 355(a)(1)(D)) and so much of section 356 as relates to section 355, stock of controlled acquired by distributing by reason of any transaction (i) which occurs within five years of the distribution of such stock, and (ii) which is a taxable transaction, shall not be treated as stock of controlled, but as other property (hot stock rule). Stock treated as other property under section 355(a)(3)(B) is referred to in this preamble as hot stock.

Section 1.355-2(g) (as applied prior to the applicability of these temporary regulations) (former § 1.355-2(g)) provides that for purposes of section 355(a)(1)(A), stock of controlled acquired in a taxable transaction (other than a transaction described in § 1.355-3(b)(4)(iii)) within the pre-distribution

period shall not be treated as stock of controlled but shall be treated as "other property." However, for purposes of section 355(a)(1)(D), the stock so acquired is stock of controlled.

Section 355(b)(3)(D) provides that the Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of section 355(b)(3), including regulations that provide for the proper application of section 355(b)(2)(B), (C), and (D), and modify the application of section 355(a)(3)(B), in connection with the application of section 355(b)(3). Pursuant to this grant of authority, these temporary regulations modify the application of section 355(a)(3)(B) in order to harmonize the hot stock rule and section 355(b).

Explanation of Provisions

1. Hot Stock Rule Inapplicable Where Controlled Is a DSAG Member

Congress enacted section 355(b)(3) because it was concerned that, prior to a distribution under section 355, corporate groups conducting business in separate corporate entities often had to undergo elaborate restructurings to place active businesses in the proper entities to satisfy the ATB requirement. See, for example, H.R. Rep. No. 109-304, at 53, 54 (2005). The effect of section 355(b)(3) is to treat a corporation's SAG as a single corporation for purposes of the ATB requirement. Consistent with this treatment, Congress enacted the Technical Corrections to clarify:

that if a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) is treated for purposes of section 355(b)(2) as acquired in a transaction in which gain or loss was recognized in whole or in part. Accordingly, such an acquisition is subject to the provisions of section 355(b)(2)(C), and may qualify as an expansion of an existing active trade or business conducted by the distributing corporation or the controlled corporation, as the case may be.

The provision clarifies that the Treasury Department shall prescribe regulations that provide for the proper application of sections 355(b)(2)(B), (C), and (D) in the case of any corporation that is tested for active business under the separate affiliated group rule, and that modify the application of section 355(a)(3)(B) in the case of such a corporation in a manner consistent with the purposes of the provision.

153 Cong. Rec. S16057 (daily ed. Dec. 19, 2007) (Joint Committee on Taxation's explanation of H.R. 4839, which explanation was printed in the

Congressional Record at the request of Senator Baucus, who stated that the explanation expressed the Senate Finance Committee's understanding of the bill).

Accordingly, the SAG regime affords a group a certain amount of flexibility regarding the satisfaction of the ATB requirement. For example, Congress indicated that, for purposes of section 355(b), in certain circumstances a stock acquisition will be treated in a manner comparable to an asset acquisition and, as such, may constitute an expansion of an existing trade or business. The IRS and Treasury Department have further interpreted the SAG regime to disregard acquisitions of additional stock of a current subsidiary SAG member for purposes of satisfying the ATB requirement. See proposed § 1.355-3(b)(1)(ii).

Although the SAG regime is not applicable for purposes of section 355(a)(3)(B), the Technical Corrections provide a specific grant of regulatory authority indicating that the application of the hot stock rule may be modified to apply in a manner consistent with the SAG regime of section 355(b)(3). Toward that end, these temporary regulations reflect the fundamental conclusion that the hot stock rule should not apply to any acquisition of stock of controlled where controlled is a DSAG member at any time after the acquisition (but prior to the distribution of controlled).

Such a conclusion resolves conflicts that would otherwise arise under section 355(a)(3)(B) and section 355(b). For example, suppose distributing acquired all of controlled's stock in a taxable transaction that qualified as an expansion of distributing's existing trade or business under the SAG regime, and later distributed all such stock within five years of the acquisition in an unrelated transaction. The distribution would satisfy the ATB requirement but, absent the rule reflected in these temporary regulations, could otherwise be fully taxable under the hot stock rule. Such a result seems inconsistent with Congressional intent. Similarly, to achieve consistency with the SAG regime, if controlled is a DSAG member and distributing acquires additional controlled stock, such acquisition should be disregarded for purposes of section 355(a)(3)(B).

Therefore, these temporary regulations generally provide that controlled stock acquired by the DSAG within the pre-distribution period in a taxable transaction constitutes hot stock, except if controlled is a DSAG member at any time after the acquisition (but prior to the distribution of controlled).

Accordingly, each of Rev. Rul. 76–54 (1976–1 CB 96) and Rev. Rul. 65–286 (1965–2 CB 92) is obsolete.

2. Transfers Among DSAG Members

Consistent with the SAG regime, which treats the DSAG as a single corporation, transfers of controlled stock owned by DSAG members immediately before and immediately after the transfer are disregarded and are not treated as acquisitions for purposes of the hot stock rule. Compare proposed § 1.355–3(b)(1)(ii) (applying a similar rule for purposes of the ATB requirement).

3. Hot Stock Rule Inapplicable to Acquisitions From Certain Affiliates

Former § 1.355–2(g) provided that the hot stock rule did not apply to acquisitions of controlled stock in a transaction described in § 1.355–3(b)(4)(iii) (affiliate exception). In other words, former § 1.355–2(g) generally exempted from the hot stock rule an acquisition of controlled stock by distributing from a member of the affiliated group (as defined in § 1.355–3(b)(4)(iv)) of which distributing was a member. Compare Notice 2007–60, 2007–2 CB 466 (IRS will not challenge applicability of § 1.355–3(b)(4)(iii) to distributions effected on or before date temporary or final regulations modifying § 1.355–3(b)(4)(iii) are published). These temporary regulations retain the affiliate exception of former § 1.355–2(g) (including its treatment of stock described in section 1504(a)(4)). The IRS and Treasury Department, however, continue to study what impact transfers between affiliates should have on the satisfaction of the ATB requirement and the application of the hot stock rule and believe that, when finalized, the rules regarding the ATB requirement and the hot stock rule should generally be applied consistently with respect to transactions between affiliates.

4. Future Guidance Under Section 355(a)(3)(B)

The IRS and Treasury Department are considering issuing additional guidance under section 355(a)(3)(B), as described in this section 4 of the preamble. Such guidance would be in addition to, rather than in replacement of, these temporary regulations. In the Proposed Rules section in this issue of the **Federal Register** (REG–150670–07), comments are requested regarding these temporary regulations and the issues described in this preamble.

A. Dunn Trust and Predecessor Issues

Section 355(a)(3)(B) applies to controlled stock acquired by reason of any transaction during the pre-distribution period in which gain or loss is recognized in whole or in part. The primary types of transactions for which the IRS and Treasury Department are considering issuing additional guidance generally involve the effect of indirect acquisitions and the extent to which predecessor rules should apply for purposes of the hot stock rule. Although the IRS and Treasury Department are considering addressing in future guidance the issues arising in transactions described in this section 4.A. of the preamble, no inference should be drawn regarding the present application of section 355(a)(3)(B), including these temporary regulations, to such transactions.

For example, future guidance may address whether, in a situation where a corporation that owns controlled stock joins the DSAG in a taxable transaction, the DSAG is treated as acquiring the controlled stock in a taxable transaction. Compare section 355(b)(3)(B); proposed § 1.355–3(b)(1)(ii) and (b)(4)(i). Similarly, guidance may address the treatment of taxable acquisitions of controlled stock during the pre-distribution period by a corporation that subsequently joins the DSAG in a nontaxable transaction.

The IRS and Treasury Department are also considering issuing additional guidance that treats the DSAG as making any acquisition made by a predecessor of a DSAG member. Compare H.R. Rep. No. 83–2543, at 38 (1954) (Conf. Rep.) (“by reason of” language of section 355(a)(3)(B) encompasses purchase of controlled stock by a corporation that is in control of distributing prior to “downstairs merger” by such purchaser into distributing). For this purpose, a predecessor of a corporation would be a corporation that transfers its assets to such corporation in a transaction to which section 381(a) applies. Such guidance would address the circumstances in which a predecessor of distributing (or predecessor of a DSAG member) effects an acquisition of controlled stock described in section 355(a)(3)(B).

Additionally, if a DSAG acquires stock of a corporation (target) during the pre-distribution period in a taxable transaction and such target is subsequently acquired by controlled in a section 381(a) transaction, the earlier taxable acquisition of target stock may implicate section 355(a)(3)(B). A conceptually similar issue was

addressed in *Dunn Trust v. Commissioner*, 86 T.C. 745 (1986), *acq.* (1998–1 CB 5 n. 4 (acquiescing in result only)), except that in *Dunn Trust* the target that was acquired by distributing was not subsequently acquired by controlled in a section 381(a) transaction. Instead, in *Dunn Trust*, distributing acquired stock of target in a taxable transaction and subsequently contributed such target stock (which stock could not have been distributed without violating section 355(a)(3)(B)) to controlled in exchange for controlled stock in a nontaxable transaction. The Tax Court ruled that the controlled stock was not hot stock under section 355(a)(3)(B). Where distributing acquires target stock in a taxable transaction, and the target is subsequently either combined with controlled in a nontaxable section 381(a) transaction or (as in *Dunn Trust*) acquired by controlled in a nontaxable stock acquisition, the IRS and Treasury Department believe that such acquisitions raise an issue as to whether target or controlled is the “real controlled” for purposes of section 355(a)(3)(B).

Identifying the “real controlled” might be illustrated by the following example. Assume that distributing owns an amount of stock in controlled that constitutes control within the meaning of section 368(c) but which does not meet the requirements of section 1504(a)(2). Controlled, in turn, owns stock of a target subsidiary that satisfies the requirements of section 1504(a)(2). Distributing acquires additional target stock in a taxable transaction, which stock is then contributed to controlled in exchange for additional controlled stock in a transaction to which section 351(a) applies. Assume that neither controlled nor target joins the DSAG after either step. The question under section 355(a)(3)(B) is whether a target whose stock is acquired by the DSAG in a taxable transaction should be treated as the “real controlled”, where such additional target stock is subsequently acquired by the actual controlled (or, in some cases, a CSAG member) in a nontaxable transaction. The IRS and Treasury Department are considering issuing guidance that would provide that a target whose stock is acquired by distributing in a taxable transaction may be treated as the “real controlled” for purposes of section 355(a)(3)(B) if, at the time of the distribution, the CSAG cannot satisfy the requirements of section 355(b) without taking into account an ATB conducted by the target at the time the DSAG acquired the stock of the target in the taxable transaction.

In other words, section 355(a)(3)(B) could be implicated as a result of an acquisition of target stock if the target is engaged in an ATB at the time the DSAG acquires the target stock in a taxable transaction, the target stock is then acquired by controlled (or, in some cases, a CSAG member) prior to the distribution, and at the time of the distribution of the controlled stock the CSAG is not able to satisfy the requirements of section 355(b) without taking into account an ATB that was being conducted by the target at the time the DSAG acquired the target stock in the taxable transaction.

B. Issuances of Controlled Stock Outside the Dunn Trust or Predecessor Context

The IRS and Treasury Department are considering additional guidance that would generally provide that issuances of controlled stock by controlled to distributing in a taxable transaction do not give rise to hot stock. For example, such an acquisition may occur where section 357(c) applies (see Rev. Rul. 78-442, (1978-2 CB 143) (distributing transfers a business to wholly-owned controlled, which assumes distributing's liabilities)). As noted in Rev. Rul. 78-442, the IRS and Treasury Department believe that section 355(b)(2)(C) was not intended to apply to such an acquisition of a trade or business by controlled from distributing under the facts of that ruling even if it is a taxable transaction because the acquisition was not from an "outside party". "[F]or the same reasons, section 355(a)(3)(B) * * * is not applicable to the distribution" of controlled stock acquired in such a transaction.

The IRS and Treasury Department request comments regarding the extent to which issuances by controlled of controlled stock to distributing in taxable transactions should not give rise to hot stock, whether distributing must own some minimum percentage in controlled at the time of such issuance in order for such an acquisition to be excepted from section 355(a)(3)(B), and the extent to which such transactions are adequately addressed under section 355(a)(1)(B) (relating to device) and section 355(g) (relating to distributions involving disqualified investment corporations).

C. Redemptions of Controlled Stock

Finally, the IRS and Treasury Department request comments regarding the effect of redemptions of controlled stock under section 355(a)(3)(B). Generally, if the controlled shares distributed by distributing were not acquired by distributing during the pre-distribution period, such shares cannot

be hot stock. Therefore, a redemption by controlled of its stock from unrelated parties generally should not cause any portion of distributing's controlled stock to become hot stock. Such a rule may be distinguishable from the rule under section 355(b)(2)(D). See *McLaulin v. Commissioner*, 276 F.3d 1269 (11th Cir. 2001) (applying section 355(b)(2)(D) when distributing acquired control of a subsidiary through a redemption of subsidiary stock), and Rev. Rul. 57-144 (1957-1 CB 123) (same).

The distinction can be made based on the different focus of the provisions. Section 355(a)(3)(B) provides that controlled stock "acquired by the distributing corporation" during the pre-distribution period in a taxable transaction is hot stock, and is directed at the property distributed to the distributing shareholders. In a redemption, generally no additional shares of stock are acquired by distributing, and generally no additional value is distributed to the distributing shareholders. In contrast, section 355(b)(2)(D) prohibits the acquisition of "control of a corporation." Control is a requisite status in order for distributing to distribute the stock of controlled to its shareholders under section 355. A redemption can confer this status on distributing without distributing's acquiring any additional shares of stock.

However, for purposes of section 355(a)(3)(B), the IRS and Treasury Department believe that a redemption of controlled stock from a shareholder other than distributing is the equivalent of distributing's purchase of controlled stock from the redeemed shareholder to the extent distributing is the source of funds for the redemption. Further, the IRS and Treasury Department are studying whether there are other situations in which distributing's increased percentage ownership in controlled resulting from redemptions of controlled stock from a shareholder other than distributing should be treated as hot stock.

5. Request for Comments

In the Proposed Rules section in this issue of the **Federal Register** (REG-150670-07), the IRS and Treasury Department are requesting comments regarding these temporary regulations, including comments on whether section 355(a)(3)(B) should use the same definition of taxable transaction as section 355(b), whether the exception for acquisitions from certain affiliates should be the same for both provisions, and the other issues described in this preamble.

Effective/Applicability Date

These temporary regulations are generally applicable for distributions occurring after December 15, 2008. However, unless taxpayers elect otherwise, these temporary regulations do not apply to any distribution occurring after December 15, 2008 that is pursuant to a transaction which is (1) made pursuant to an agreement which was binding on December 15, 2008, and at all times thereafter; (2) described in a ruling request submitted to the IRS on or before such date; or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission. Furthermore, taxpayers may elect to apply these temporary regulations retroactively to distributions to which section 4(b) of the Technical Corrections applies (generally to distributions occurring after May 17, 2006).

Effect on Other Documents

The following publications are obsolete as of the applicability of these temporary regulations:

Rev. Rul. 76-54 (1976-1 CB 96).

Rev. Rul. 65-286 (1965-2 CB 92).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations provide taxpayers with relief from the application of section 355(a)(3)(B) in certain situations. For this reason, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for dispensing with the notice and public comment procedures and that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to dispense with a delayed effective date. For the applicability of the Regulatory Flexibility Act refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

Availability of IRS Documents

Documents published in the IRB cited in this preamble are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.
Section 1.355-2T(g) also issued under 26 U.S.C. 355(b)(3)(D). * * *

■ **Par. 2.** Section 1.355-0 is amended by amending the entry under § 1.355-2 to revise paragraph (g) and add paragraph (i) to read as follows:

§ 1.355-0 Outline of sections.

* * * * *

§ 1.355-2 Limitations.

* * * * *

(g) [Reserved].

* * * * *

(i) [Reserved].

■ **Par. 3.** Section 1.355-0T is added to read as follows:

§ 1.355-0T Outline of sections (temporary).

This section lists the major paragraphs under § 1.355-2T.

§ 1.355-2T Limitations (temporary).

(a) through (f)(2) [Reserved]. For further guidance, see the entries for § 1.355-2(a) through (f)(2) in § 1.355-0.
(g) Recently acquired controlled stock under section 355(a)(3)(B).
(1) Other property.
(2) Exceptions.
(3) DSAG.
(4) Taxable transaction.
(5) Examples.
(h) [Reserved]. For further guidance, see the entry for § 1.355-2(h) in § 1.355-0.

- (i) Effective/applicability date.
- (1) In general.
- (2) Transition election.
- (3) Retroactive election.
- (4) Manner of election.
- (5) Prior law.
- (6) Expiration date.

■ **Par. 4.** Section 1.355-1 is amended by revising paragraph (a) to read as follows:

§ 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Effective/applicability date of certain sections.* Except as otherwise provided, this section and §§ 1.355-2 through 1.355-4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355-1 through 1.355-4 (revised as of April 1, 1987). This section and §§ 1.355-2 through 1.355-4, other than § 1.355-2(g), do not reflect the amendments to section 355 made by the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Technical Corrections Act of 2007. For the applicability date of §§ 1.355-2T(g), 1.355-5, 1.355-6 and 1.355-7, see §§ 1.355-2T(i), 1.355-5(e), 1.355-6(g), and 1.355-7(k), respectively.
* * * * *

■ **Par. 5.** Section 1.355-2 is amended by revising paragraph (g) and adding paragraph (i) to read as follows:

§ 1.355-2 Limitations.

* * * * *

(g) [Reserved]. For further guidance, see § 1.355-2T(g).

* * * * *

(i) [Reserved]. For further guidance, see § 1.355-2T(i).

■ **Par. 6.** Section 1.355-2T is added to read as follows:

§ 1.355-2T Limitations (temporary).

(a) through (f)(2) [Reserved]. For further guidance, see § 1.355-2(a) through (f)(2).

(g) *Recently acquired controlled stock under section 355(a)(3)(B)*—(1) *Other property.* Except as provided in paragraph (g)(2) of this section, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, stock of a controlled corporation acquired by the DSAG in a taxable transaction (as defined in paragraph (g)(4) of this section) within the five-year period ending on the date of the distribution (pre-distribution period) shall not be treated as stock of the controlled corporation but shall be treated as “other property.” Transfers of controlled corporation stock that is owned by the DSAG immediately before and immediately after the transfer are disregarded and are not acquisitions for purposes of this paragraph (g)(1).
(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to an acquisition of stock of the controlled corporation—
(i) If the controlled corporation is a DSAG member at any time after the acquisition (but prior to the distribution); or
(ii) Described in § 1.355-3(b)(4)(iii).

(3) *DSAG.* For purposes of this paragraph (g), a DSAG is the distributing corporation’s separate affiliated group (the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply) that consists of the distributing corporation as the common parent and all corporations affiliated with the distributing corporation through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)). For purposes of paragraph (g)(1) of this section, any reference to the DSAG is a reference to the distributing corporation if it is not the common parent of a separate affiliated group.

(4) *Taxable transaction*—(i) *Generally.* For purposes of this paragraph (g), a taxable transaction is a transaction in which gain or loss was recognized in whole or in part.

(ii) *Dunn Trust and predecessor issues.* [Reserved].

(5) *Examples.* The following examples illustrate this paragraph (g). Assume that C, D, P, and S are corporations, X is an unrelated individual, each of the transactions is unrelated to any other transaction and, but for the issue of whether C stock is treated as “other property” under section 355(a)(3)(B), the distributions satisfy all of the requirements of section 355. No inference should be drawn from any of these examples as to whether any requirements of section 355 other than section 355(a)(3)(B), as specified, are satisfied. Furthermore, the following definitions apply:

(i) *Purchase* is an acquisition that is a taxable transaction.

(ii) *Section 368(c) stock* is stock constituting control within the meaning of section 368(c).

(iii) *Section 1504(a)(2) stock* is stock meeting the requirements of section 1504(a)(2).

Example 1. Hot stock. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock within five years after the year 6 purchase, for purposes of section 355(a)(1)(A), section 355(c), and so much of section 356 as relates to section 355, the C stock purchased in year 6 would be treated as “other property.” See paragraph (g)(1) of this section.

Example 2. C becomes a DSAG member. For more than five years, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases additional C stock from X such that D’s total ownership of C is section 1504(a)(2) stock. If

D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property" because C becomes a DSAG member. See paragraph (g)(2)(i) of this section. The result would be the same if D did not own any C stock prior to year 6 and D purchased all of the C stock in year 6. See paragraph (g)(2)(i) of this section. Similarly, if D did not own any C stock prior to year 6, D purchased 20 percent of the C stock in year 6, and then acquired all of the remaining C stock in year 7, the C stock purchased in year 6 and the C stock acquired in year 7 (even if purchased) would not be treated as "other property" because C becomes a DSAG member. See paragraph (g)(2)(i) of this section.

Example 3. Intra-SAG transaction. For more than five years, D has owned all of the stock of S. D and S, in the aggregate, have owned section 368(c) stock but not section 1504(a)(2) stock of C. Therefore, D and S are DSAG members, but C is not. In year 6, D purchases S's C stock. If D distributes all of its C stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property". D's purchase of the C stock from S is disregarded for purposes of paragraph (g)(1) of this section because that C stock was owned by the DSAG immediately before and immediately after the purchase. See paragraph (g)(1) of this section.

Example 4. Affiliate exception. For more than five years, P has owned 90 percent of the sole outstanding class of the stock of D and a portion of the stock of C, and X has owned the remaining 10 percent of the D stock. Throughout this period, D has owned section 368(c) stock but not section 1504(a)(2) stock of C. In year 6, D purchases P's C stock. However, D does not own section 1504(a)(2) stock of C after the year 6 purchase. If D distributes all of its C stock to X in exchange for X's D stock within five years after the year 6 purchase, the distribution of the C stock purchased in year 6 would not be treated as "other property" because the C stock was purchased from a member (P) of the affiliated group (as defined in § 1.355-3(b)(4)(iv)) of which D is a member, and P did not purchase that C stock within the pre-distribution period. See paragraph (g)(2)(ii) of this section.

(h) [Reserved]. For further guidance, see § 1.355-2(h).

(i) **Effective/applicability date**—(1) *In general.* Paragraphs (g)(1) through (g)(5) of this section apply to distributions occurring after December 15, 2008.

However, except as provided in paragraph (i)(2) of this section, paragraphs (g)(1) through (g)(5) of this section do not apply to any distribution occurring after December 15, 2008 that is pursuant to a transaction which is—

(i) Made pursuant to an agreement which was binding on December 15, 2008, and at all times thereafter;

(ii) Described in a ruling request submitted to the Internal Revenue Service on or before such date; or

(iii) Described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(2) **Transition election.** In the case of any distribution described in the second sentence of paragraph (i)(1) of this section, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section. However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(3) **Retroactive election.** In the case of any distribution occurring on or before December 15, 2008, taxpayers may elect to apply all of paragraphs (g)(1) through (g)(5) of this section to distributions to which section 4(b) of the Tax Technical Corrections Act of 2007, Public Law 110-172 (121 Stat. 2473, 2476) applies (generally applicable to distributions made after May 17, 2006, as provided in section 4(d) of that act). However, neither the distributing corporation nor any person related to the distributing corporation within the meaning of section 267(b) (determined immediately before or immediately after the distribution) may make such an election with respect to a distribution unless all such persons make such an election with respect to such distribution.

(4) **Manner of election.** Taxpayers may make any election available under this paragraph (i) by applying the selected rule on its original or amended return.

(5) **Prior law.** For distributions to which paragraphs (g)(1) through (g)(5) of this section do not apply, see § 1.355-2(g), as contained in 26 CFR part 1, revised as of April 1, 2008.

(6) **Expiration date.** The applicability of paragraph (i) of this section will expire on December 15, 2011.

Steve T. Miller,

(Acting) Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-29544 Filed 12-12-08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0497]

RIN 1625-AA01

Special Anchorage Area "A", Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends the Boston Inner Harbor Special Anchorage Area "A" at the entrance to Fort Point Channel in Boston Harbor, Boston, MA at the request of the Boston Harbormaster and the Boston Harbor Yacht Club. This action will provide additional anchorage space and provide a safe and secure anchorage for vessels of not more than 65 feet in length.

DATES: This rule is effective January 14, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0497 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0497 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; and the Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223-8355 or e-mail

John.J.Mauro@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 20, 2008, we published a notice of proposed rulemaking (NPRM) entitled Special Anchorage "A", Boston Harbor, MA in the **Federal Register** (73 FR 49131). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

In 1982, three anchorages were established in response to a request by the Boston Harbormaster. These three anchorages were designated Boston Inner Harbor A, Boston Inner Harbor B, and Boston Inner Harbor C. When they were created, 39 of 43 comments were in favor of the anchorage establishments. Many of the initial commenters identified themselves as members of the Boston Harbor Sailing Club, a sailing club located in close proximity to the proposed anchorage area at that time. Of the disfavoring groups, the Department of the Army, Corps of Engineers expressed some concern about Anchorage Area "C" encroaching on the Fort Point Channel approach. Another commenter complained that Anchorage Area "A", extended southward, interfering with the approach to Rowes Wharf. The two remaining commenters represented commercial interests opposed to the Anchorage Areas, especially Anchorage Area "C".

A public hearing was held thereafter in which six commenters voiced their support for the Anchorage Area. One commenter, however, expressed concern about the proximity of Anchorage Area "C" to the main shipping channel for Boston Harbor. With an average speed of six (6) knots, a large vessel transiting the area could damage closely anchored sailboats. The same commenter also disapproved of the way Anchorage Area "C" encroached on the Fort Point Channel. Another commenter complained about Anchorage Area "A" and the difficult approach that would be required by a vessel attempting to moor on Rowes Wharf. The final commenter was concerned about the navigational safety of the Fort Point Channel approach, which was reduced by Anchorage Area "C", and also agreed with the concerns about the approach to Rowes Wharf.

At that time, in response to the comments received, the Anchorage Areas "A" and "C" were modified in response to reasonable complaints that were raised by commercial parties. Each of the areas were plotted on a large scale chart providing for greater accuracy. The southern boundary of Anchorage

Area "A" was moved northward to allow a more favorable approach to Rowes Wharf and the southern boundary of Anchorage Area "C" was relocated northward to open up the approach to Fort Point Channel. The eastern boundary of Anchorage Area "C" was moved away from the main shipping channel.

At the same time, administration of the anchorage area was given to the Harbormaster of the City of Boston pursuant to local ordinances. The City of Boston was also given charge of installing and maintaining suitable navigational aids to mark the limits of the anchorage area.

In 1985, in response to a request by the Boston Harbormaster, Boston Police Department and the developer of the Rowes Wharf reconstruction project, a modification to the anchorages was deemed to be required because redevelopment of the Rowes Wharf area in Boston would change recreational and commercial vessel traffic patterns in the Rowes Wharf waterfront area. The presence of the existing Anchorage Area B would impede the passage of vessels in and out of Rowes Wharf and would create a navigation safety hazard if vessels were anchored there. Therefore, this modification removed Anchorages A, B and C and established Boston Inner Harbor Anchorage Area "A".

Since this time, Boston Harbormasters have permitted the Boston Harbor Sailing Club to establish moorings in Anchorage Area A. The Boston Harbor Sailing Club rents the moorings to customers who then apply to the City of Boston for a permit allowing the mooring. Although the moorings are relatively small, the associated anchoring systems range from 1000 to 4000 pounds.

In addition, when the anchorage was established, the Coast Guard used the North American Datum 1927 (NAD27) as a plotting system. Since then, however, the Coast Guard adopted the North American Datum 1983 (NAD83) for its plotting system. This new system changed the coordinate positions of the anchorages on the charts. In this rulemaking, the Coast Guard intends to update the position of this anchorage using NAD83 coordinates.

When Rowes Wharf was finished, the new wharf had a set of docks attached to it. The current placement of these docks does not allow enough of a fairway for vessels to transit between the anchorage area and the pier facings. Changing the size of the anchorage area will allow this to occur by changing the positions of the buoys.

Discussion of Comments and Changes

No comments or changes were suggested to the proposed rule. None have been made.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, as the creation of the anchorage will align more efficiently with current traffic patterns.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of recreational vessels transiting in the vicinity of the anchorage, the Boston Aquarium, Boston Harbor ferry vessels and water taxis transiting the local area as well as those vessels transiting into Anchorage Area "A".

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321-4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(f), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.30 by revising paragraph(m) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(m) Boston Inner Harbor A. (1) The waters of the western side of Boston Inner Harbor north of the entrance to the Fort point Channel bound by the following points beginning at latitude 42°21'32" N, longitude 071°02'50" W; thence to latitude 42°21'33" N, longitude 071°02'44" W; thence to latitude 42°21'26" N, longitude 071°02'36" W; thence to latitude 42°21'26" N, longitude 071°02'53" W; thence to point of origin. Datum NAD83.

(2) The area is principally for use by yachts and other recreational craft. Temporary floats or buoys for marking anchors will be allowed. Fixed mooring piles or stakes are prohibited. The anchoring of vessels and placing of temporary moorings will be under the jurisdiction, and at the discretion of the Harbormaster, City of Boston. All moorings shall be so placed that no vessel, when moored, will at any time extend beyond the limits of the area.

Dated: November 25, 2008.

Dale G. Gabel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E8-29365 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 72, 73, 74, 77, and 78**

[EPA-HQ-OAR-2008-0774; FRL-8750-9]

RIN 2060-AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO₂) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in this direct final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

DATES: This rule is effective, and the interim final rule (EPA-HQ-OAR-2008-0744; FRL-8750-8) published simultaneously in the **Federal Register** is withdrawn, on April 14, 2009 without further notice, unless EPA receives adverse comment on the rule by January 29, 2009. If EPA receives timely adverse comment on the direct final rule, the Agency will publish a timely

withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn.

In addition to submitting written comments on this rule, any party wanting to submit oral testimony on the rule must request a public hearing by telephone or by e-mail to EPA by December 22, 2008. If such a telephone or e-mail request for a public hearing is received by that date, a public hearing will be held on December 30, 2008 in Washington, DC. For further information on requesting a public hearing, see the **DATES** and **SUPPLEMENTARY INFORMATION** sections of the proposed rule published in the **Federal Register** simultaneously with this notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0774, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- **Mail:** Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460
- **Hand Delivery:** Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0774 (which incorporates by reference the dockets for CAIR and the CAIR FIPs, i.e., Docket ID Nos. EPA-HQ-OAR-2003-0053 and EPA-HQ-OAR-2004-0076). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9151, e-mail at alpern.dwight@epa.gov. Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/airmarkets>.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Administrative Procedures Used in This Action. EPA is publishing this rule without a prior proposed rule because the Agency views this as a noncontroversial action and anticipates no adverse comment. In this rule, EPA is simply reaffirming the promulgation of certain revisions, of the Acid Rain Program rules, that were previously issued and have been in effect since mid-2006 and withdrawing the interim final rule that reaffirms the promulgation of the same revisions. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposed rule to reaffirm the promulgation of these revisions to the Acid Rain Program rules, and withdraw the interim final rule, if any adverse comment is received on this direct final rule during the comment period. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so during the comment period established by this notice. For further information about commenting on this rule, see the **DATES and ADDRESSES** sections of this preamble.

If EPA receives any adverse comment on this direct final rule during the comment period, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn. EPA will address timely comments on the direct final rule in any subsequent final rule based on the proposed rule.

EPA notes that it is also simultaneously publishing the interim

final rule, referenced above, that reaffirms the promulgation of these revisions. The interim final rule is effective immediately upon the date of publication in the **Federal Register** and will continue in effect until December 15, 2009, unless the interim final rule is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these revisions.

Considerations in Preparing Comments for EPA

A. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in locating information in this preamble.

- I. Overview
- II. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Overview

In May 2005 and April 2006, EPA promulgated certain revisions to the rules for the Acid Rain Program (in 40 CFR parts 72 through 78). These revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs.¹ 70 FR 25162 (May

¹ The titles for the May 12, 2005 and April 28, 2006 **Federal Register** notices identify the actions taken in those notices. The full title for the May 12, 2005 notice is "Rule to Reduce Interstate Transport

12, 2005); 71 FR 25328 (Apr. 28, 2006). Most of these revisions were adopted for reasons independent of CAIR and the CAIR FIPs, although some were adopted to facilitate coordination of the Acid Rain trading program with the trading programs offered by EPA in CAIR and the CAIR FIPs. A few additional revisions, which are not being reaffirmed by this rule, were adopted to implement CAIR and the CAIR FIPs.

On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). EPA and other parties in the proceeding have petitioned for rehearing, and the Court has not yet issued a mandate in the case. While the Court upheld petitioners' objections concerning a number of issues related to CAIR and the CAIR FIPs, none of the issues raised by the petitioners, and none of the Court's determinations, addressed the Acid Rain Program rule revisions reaffirmed by this rule.

Only a few of the Acid Rain Program rule revisions were adopted to implement CAIR and the CAIR FIPs and thus were encompassed by petitioners' arguments and the Court's decision: *i.e.*, revisions to part 73 providing that SO₂ allowances used for compliance with CAIR and CAIR FIPs would not be used for compliance in the Acid Rain Program and revisions to part 78 providing that final actions of the Administrator under the CAIR and CAIR FIP trading programs could be appealed under the administrative appeal procedures applicable to the Acid Rain Program. See 70 FR 25,335/3 (revision adding § 73.35(a)(3)) and 25,338–39 (revisions referencing subparts AA through IIII of part 96 and the CAIR designated representative and CAIR authorized account representative); and 71 FR 25,379–80 (revisions referencing subparts AA through IIII of part 97 and the CAIR designated representative and CAIR authorized account representative).

This notice reaffirms the promulgation of only the other Acid Rain Program rule revisions—*i.e.*, the revisions that were not necessary for implementing CAIR and the CAIR FIPs—finalized in the **Federal Register** notices that also finalized the CAIR and

CAIR FIP rules. (These revisions are herein referred to as “non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions”.) EPA believes it is reasonable to view the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions (which are described in detail above) as unaffected by the Court's decision, which did not address them. However, EPA is concerned that there be no uncertainty about the legal status of these rule revisions. Most of them are crucial to the ongoing operation of the Acid Rain Program, while the rest of them streamline and, in some cases, clarify the requirements of the program, thereby facilitating its operation.

EPA is, in this notice, reaffirming—pursuant to its authority under Title IV of the CAA and CAA section 301—the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules as a direct final rule and withdrawing the interim final rule as of the effective date of the direct final rule. The reasons why the rule revisions are appropriate for the Acid Rain Program, why EPA maintains that it should remove any uncertainty about the legal status of the rule revisions, and therefore why EPA is issuing this direct final rule are set forth in detail in the preamble of the interim final rule published in the **Federal Register** simultaneously with this notice and in the preceding **SUPPLEMENTARY INFORMATION** section. In addition, EPA is publishing simultaneously in the **Federal Register** a parallel proposed rule reaffirming the promulgation of these revisions and withdrawing the interim final rule in order to provide interested persons a full opportunity to comment on the rule revisions in the direct final rule. The interim final rule reaffirming the promulgation of these revisions is effective immediately upon the date of promulgation in the **Federal Register** and continues to be effective for 12 months from that date, unless the interim final rule is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these revisions. The interim final rule removes any potential that these non-CAIR- and non-CAIR-FIP-related revisions would suddenly become no longer effective while this direct final rule and the parallel proposed rule are providing the opportunity for public comment on these revisions.

II. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

In this notice, EPA is reaffirming, as a direct final rule, the promulgation of the non-CAIR- and non-CAIR-FIP-

related revisions of the Acid Rain Program rules, which revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. EPA is reaffirming the following three types of non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules: (1) Revisions that implement source-level, rather than unit-level compliance with the allowance-holding requirement in the Acid Rain Program, effective on July 1, 2006; (2) revisions that expressly allow designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator, effective on June 27, 2006; and (3) revisions making technical changes to streamline and, in some cases, clarify the requirements of the Acid Rain Program, effective on June 27 and July 1, 2006 depending on the specific revision. Of all the Acid Rain Program rule revisions that were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs, the only revisions whose promulgation EPA is not reaffirming are those that are related to CAIR and the CAIR FIPs, *i.e.*, those (which are described in detail in Section I of this preamble) that are necessary for implementation of the CAIR and CAIR FIP trading programs. This action will have no impact on those revisions.

The non-CAIR- and non-CAIR-FIP-related revisions whose promulgation is reaffirmed in this direct final rule are described in detail, along with EPA's reasons for such reaffirmation, in the interim final rule published in the **Federal Register** simultaneously with this notice. The revisions whose promulgation is reaffirmed in this direct final rule comprise all of the revisions of the Acid Rain Program rules that were included in May 12, 2005 final rulemaking notice that also finalized CAIR (70 FR 25,333–39) and the April 28, 2006 final rulemaking notice that also finalized the CAIR FIPs (71 FR 25,377–80) *except* those listed in section III.D of the preamble of the interim final rule.

III. 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 is therefore not subject to review under the Executive Order. In this action, EPA is simply reaffirming the promulgation of Acid Rain Program rule revisions that were

of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call.” 70 FR 25162. The full title for the April 28, 2006 **Federal Register** notice is “Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Acid Rain Program.” 71 FR 25328.

previously issued and are currently in effect and have been since mid-2006.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden.

Moreover, EPA maintains that the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, *e.g.*, by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small

entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule does not change the existing Acid Rain Program rules and thus the economic impact of those rules on small entities. This rule simply reaffirms the promulgation of existing Acid Rain Program rule revisions that have been in effect since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the economic impact of the then-existing rules on all regulated sources and thus on small entities that might be, or own, regulated sources. For example, by requiring compliance on a source, rather than a unit, basis, the revisions reduced the potential for excess emissions penalties due to an inadvertent error, *e.g.*, in the owner's distribution of allowances among the units at a source that would cause one unit to have more than enough allowances to cover emissions and another unit to not have enough allowances to cover emission. As a further example, the revisions removed some requirements (*e.g.*, the required submission of an annual compliance certification report) and thereby removed some costs of compliance for all regulated sources.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This 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. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. 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.” This final rule does not have tribal implications, as specified in Executive Order 13175. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on 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 rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled “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 and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 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 rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

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 has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

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). This rule will be effective on April 14, 2009 without further notice, except to the extent EPA receives adverse comment on the rule or one or more provisions of the rule by January 29, 2009 or date 30 days from date on which public hearing will be held.

If EPA receives timely adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public which provisions of this rule are being withdrawn and will not take effect.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. E8-29389 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 72, 73, 74, 77, and 78**

[EPA-HQ-OAR-2008-0744; FRL-8750-8]

RIN 2060-AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is taking interim final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO₂) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the

Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in this interim final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

DATES: This action is effective on December 15, 2008 and will continue in effect until December 15, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0774, which incorporates by reference the dockets for CAIR and the CAIR FIPs (Docket ID Nos. EPA-HQ-OAR-2003-0053 and EPA-HQ-OAR-2004-0076). All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Although listed in the index, some information is

not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343-9151, e-mail at alpern.dwight@epa.gov. Electronic copies of this document can be accessed through the EPA Web site at: <http://www.epa.gov/airmarkets>.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before February 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in locating information in this preamble.

- I. Overview
- II. Administrative Procedures Used in This Action
- III. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
 - A. Rule Revisions Implementing Source-Level Compliance
 - B. Rule Revisions Allowing Use of Agents by Designated Representative and Authorized Account Representatives
 - C. Rule Revisions Making Technical Changes
 - D. Identification of Specific Rule Revisions Whose Promulgation Is Reaffirmed
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act

- D. Unfunded Mandates Reform Act*
- E. Executive Order 13132: Federalism*
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*
- I. National Technology Transfer Advancement Act*
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*
- K. Congressional Review Act*

I. Overview

In May 2005 and April 2006, EPA promulgated certain revisions to the rules for the Acid Rain Program (in 40 CFR parts 72 through 78). These revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. 70 FR 25162 (May 12, 2005); 71 FR 25328 (Apr. 28, 2006).¹ Most of these revisions were adopted for reasons independent of CAIR and the CAIR FIPs, although some were adopted to facilitate coordination of the Acid Rain trading program with the trading programs offered by EPA in CAIR and the CAIR FIPs. A few additional revisions, which are not being reaffirmed by this rule, were adopted to implement CAIR and the CAIR FIPs.

On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). EPA and other parties in the proceeding have petitioned for rehearing, and the Court has not yet issued a mandate in the case. However, depending on its response to the petitions, the Court may issue a mandate. While the Court's July 11, 2008 decision upheld petitioners' objections concerning a number of issues related to CAIR and the CAIR FIPs, none of the issues raised by the petitioners, and none of the Court's determinations, addressed the Acid Rain Program rule revisions reaffirmed by this rule.

Only a few of the Acid Rain Program rule revisions were adopted to implement CAIR and the CAIR FIPs and thus were encompassed by petitioners' arguments and the Court's decision: i.e., revisions to part 73 providing that SO₂ allowances used for compliance with CAIR and CAIR FIPs could not be used for compliance in the Acid Rain Program and revisions to part 78 providing that final actions of the Administrator under the CAIR and CAIR FIP trading programs could be appealed under the administrative appeal procedures applicable to the Acid Rain Program. See 70 FR 25,335/3 (revision adding § 73.35(a)(3)) and 25,338–39 (revisions referencing subparts AA through IIII of part 96 and the CAIR designated representative and CAIR authorized account representative); and 71 FR 25,379–80 (revisions referencing subparts AA through IIII of part 97 and the CAIR designated representative and CAIR authorized account representative).

This notice reaffirms the promulgation of only the other Acid Rain Program rule revisions—i.e., the revisions that were not necessary for implementing CAIR and the CAIR FIPs—finalized in the **Federal Register** notices that also finalized the CAIR and CAIR FIP rules. (These revisions are herein referred to as “non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions”.) EPA believes it is reasonable to view the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions (which are described in detail below) as unaffected by the Court's decision, which did not address them. However, EPA is concerned that there be no uncertainty about the legal status of these rule revisions. Most of them are crucial to the ongoing operation of the Acid Rain Program, while the rest of them streamline and, in some cases, clarify the requirements of the program, thereby facilitating its operation.

For example, some of the Acid Rain Program rule revisions published in the same **Federal Register** notice as CAIR, require owners and operators to meet the requirement to hold SO₂ allowances covering annual SO₂ emissions by maintaining a sufficient amount of allowances in an allowance account for each entire plant (i.e., source). Consistent with this approach, the rule revisions also provide for SO₂ allowance transfers to be made from one source account to another source account. See 70 FR 25,296–98. Under the Acid Rain Program rules in place before these revisions, owners and operators were required to have a separate allowance account for each unit (e.g., boiler or

combustion turbine) and could trade allowances by transferring allowances from one unit account to another. (Of course, under both the pre-revision Acid Rain Program rules and the revised rules, general accounts, which are not associated with a specific unit or source, can also be involved in allowance transfers.) The revisions requiring source-based compliance were made effective on July 1, 2006 in order to give EPA time to make the software changes necessary for implementing source-based allowance compliance and transfers and to conduct the testing to ensure proper operation of the revised allowance tracking system and in order to give owners time to adapt to source-based compliance. *Id.* at 25,296–97.

By further example, the Acid Rain Program rule revisions published in the same **Federal Register** notice as the CAIR FIPs, made effective on June 27, 2006, expressly allow, and govern, the use of agents by designated representatives, authorized account representatives, and alternates to make various types of electronic submissions under the Acid Rain Program, while preserving the representatives' ultimate responsibility for such submissions. 71 FR 25,365. These revisions give each regulated company greater flexibility in distributing, among its individual employees, the task of making electronic submissions.

After the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions became final and effective in mid-2006, EPA modified its electronic allowance and emissions tracking systems to reflect the revisions. For example, EPA removed individual-unit allowance accounts, replaced them with source accounts to which previously recorded allowance holdings were moved, and established elements in the tracking systems for making allowance transfers to and from source accounts (instead of unit accounts) and comparing the sum of the annual emissions of all regulated units at each source (instead of only an individual unit's annual emissions) to the allowances held in the source account. See 69 FR 32,684, 32,701 (June 10, 2004). EPA also added elements to the tracking systems for designated representatives, authorized account representatives, and alternates to create and use agents to submit quarterly emissions reports, including the resubmissions that are often necessary to correct reporting errors found by EPA. The revised Acid Rain Program provisions have been used and relied on by most, if not all, regulated companies since mid-2006.

¹ The titles for the May 12, 2005 and April 28, 2006 **Federal Register** notices identify the actions taken in those notices. The full title for the May 12, 2005 notice is “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call.” 70 FR 25162. The full title for the April 28, 2006 **Federal Register** notice is “Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Acid Rain Program.” 71 FR 25328.

EPA is concerned that the non-CAIR- and non-CAIR-FIP-related Acid Rain Program revisions are too important to the ongoing operation of the Acid Rain Program to allow for any uncertainty concerning their legal status, which might result in the event that the Court issues a mandate in *North Carolina*. This is particularly true for the large number of revisions that significantly affect how SO₂ allowance transfers are made and recorded, how owners and operators submit quarterly emissions reports, and how EPA compares each year the amount of allowances held and the amount of SO₂ emissions.

Allowance transfer, emissions reporting, and the comparison of emissions and allowances are matters that go to the heart of the Acid Rain Program. Under this program, an annual cap (which is about 40% lower than historical emissions for utility emissions sources) is set on the total amount of allowances issued each year. Each allowance authorizes the emission of one ton of SO₂ in the year for which the allowance is issued or in a later year. Nationwide SO₂ emissions are reduced through implementation of an emissions limitation that requires each utility emissions source to have annual SO₂ emissions not exceeding the emissions authorized by the allowances held for the year and allows for compliance through the use of allowances obtained through allocation or auction from EPA or transferred from other allowance holders. The ability of each utility emissions source to consider potential, alternative compliance options involving emission reduction actions and/or purchases or sales of SO₂ allowances in the SO₂ allowance market and to choose the option that is the most cost-effective for that emissions source results in cost-effective achievement of the national SO₂ emissions reduction goals of the Acid Rain Program. EPA implements the annual SO₂ emissions limitation through electronic allowance and tracking emissions systems that incorporate the existing Acid Rain Program rules (including rule revisions whose promulgation is reaffirmed in this notice).

If (contrary to EPA's position as discussed above) the rule revisions affecting allowance transfer, submission of quarterly emissions reports, and comparison of emissions and allowances were suddenly to become no longer effective, EPA would likely be unable to operate its electronic allowance tracking system, and might be unable to operate its electronic emissions tracking system, until extensive system modifications were made. Were the rule revisions no longer

effective, the allowance tracking system would likely have to be modified to reinstate unit accounts and unit-based compliance. Similarly, the emissions tracking system might have to be modified to provide an alternative, workable approach for submission of quarterly emissions reports by designated representatives (for whom direct involvement in the submission and resubmission process for emissions reports is often not practical). Consequently, it is likely that, in the near term until the systems were modified, EPA could not record allowances transfers, owners and operators could not use transferred allowances to comply with the allowance-holding requirement, and EPA could not determine if, and owners and operators could not demonstrate that, utility emissions sources were in compliance with the SO₂ emissions limitation. Moreover, the inability—or even uncertainty about the ability—to transfer and use allowances for compliance in the near term would likely have a significant, adverse effect on the SO₂ allowance market in the near term. Under these circumstances, it is likely that potential market participants would be reluctant to rely on allowance purchases for compliance, would have difficulty determining the value of allowances that were or might be unusable, and so would be reluctant to buy or sell allowances.

For these reasons and the reasons discussed below, EPA is, in this notice, reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules as an interim final rule, whose effectiveness is immediate upon the date of promulgation in the **Federal Register**. Because it is immediately effective, the interim final rule provides no opportunity for hearing and comment. This action removes any uncertainty concerning the legal status of these non-CAIR- and non-CAIR-FIP-related revisions in the event that the Court issues a mandate in *North Carolina*. Further, simultaneously with this notice, EPA is publishing in the **Federal Register** parallel notices of proposed and direct final rules reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions. As explained in the proposed and direct final notices, those notices provide interested persons an opportunity for public hearing and comment on the rule revisions. This interim final rule will continue in effect until December 15,

2009, unless it is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these rule revisions.

Under this approach, EPA is ensuring that the public will have an opportunity to comment on these Acid Rain Program rule revisions and that these revisions will continue in effect in the meantime on an interim basis. In the event that any timely adverse comments are submitted on any of the revisions whose promulgation is reaffirmed in the proposed and direct final rules, EPA will withdraw the direct final rule, address the merits of such comments, and finalize, to the extent appropriate, any revisions. EPA intends to complete that rulemaking process and have any final Acid Rain Program rule revisions in place December 15, 2009. If that rulemaking process is completed and the resulting direct final rule or final rule is effective before December 15, 2009, the interim final rule will be withdrawn as of the effective date of the direct final rule or final rule.

II. Administrative Procedures Used in This Action

Under CAA section 307(d)(1)(S), this action revising the Acid Rain Program rules is subject to the requirements of CAA section 307(d). Section 307(d)(3) provides that a notice of proposed rulemaking, providing an opportunity for a public hearing and comment, must be published in the **Federal Register**, except under certain circumstances, as provided in the Administrative Procedure Act (5 U.S.C. 553(b)). The requirement for such a notice does not apply “when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B).

EPA finds, for the following reasons, that providing notice and opportunity for public hearing and comment before reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules in the instant rulemaking are impracticable, unnecessary, and contrary to the public interest. As discussed above, these rule revisions were finalized on May 12, 2005 and April 28, 2006 and, since mid-2006 when they became effective, have been implemented by EPA and utilized by most, if not all, regulated companies and EPA. In fact, most of these revisions have been incorporated in the software for the allowance tracking system, which likely could not be operated without extensive modifications, and for the emissions tracking system, which

might not be operable without extensive modifications, if the incorporated revisions were no longer in effect. Consequently, as discussed above in Section I of this preamble, the loss of the effectiveness of these revisions—or even uncertainty about their continuing effectiveness—would likely result in a significant disruption of the operation of the Acid Rain Program and the SO₂ allowance market in the near term, contrary to Congressional intent that EPA implement the Acid Rain Program under CAA Title IV and contrary to the public interest in continuation of the significant, cost-effective emission reductions required, and actually achieved, under the Acid Rain Program since its commencement in 1995.

Moreover, no party petitioned for review of these rule revisions. The judicial proceedings involving the rulemaking notices (i.e., the May 12, 2005 notice at 70 FR 25162, which also finalized CAIR, and the April 28, 2006 notice at 71 FR 25328, which also finalized the CAIR FIPs) in which these Acid Rain Program rule revisions were promulgated, relate only to Petitions for Review of specific aspects of CAIR and the CAIR FIPs. No party to those proceedings asked the Court to review these revisions to the Acid Rain Program rules, and no issues concerning these revisions were raised or addressed by any petitioners, any intervenors, amici, EPA, or the Court.

Although EPA therefore believes that the Court's July 11, 2008 decision vacating and remanding of CAIR and the CAIR FIPs in *North Carolina* can reasonably be interpreted as not applying to these revisions, it is important that the legal status of these revisions be absolutely clear. EPA is concerned that, if and when the Court issues a mandate for the *North Carolina* decision, that might create uncertainty about whether these revisions remain in effect, despite EPA's belief that the decision does not apply to these revisions.

For the reasons discussed above, any such uncertainty about their continuing effectiveness would likely cause significant disruption in the near term to operation of the Acid Rain Program, the SO₂ allowance market, and the achievement of the significant, cost-effective emission reductions required under the Acid Rain Program. In order to avoid such disruption, EPA maintains that it should provide certainty about the legal status of these rule revisions as soon as possible. However, the delay inherent in providing notice and opportunity for hearing and public comment before taking final action would prevent EPA from providing this

certainty as soon as possible. EPA therefore finds that providing notice and opportunity for comment in the instant rulemaking before reaffirming the promulgation of the revisions incorporated in the electronic allowance and emissions tracking systems is impracticable and contrary to the public interest.

In addition, EPA finds that providing notice and opportunity for comment in the instant rulemaking before reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules—including both those revisions incorporated in the electronic allowance and emissions tracking systems and the other revisions—is unnecessary. No petitions for review of these rule revisions were filed. Since, in addition, these rule revisions have been in effect since mid-2006 without any indication they have caused concern or problems for sources subject to the Acid Rain Program or any other members of the public, EPA maintains that it is unlikely that the public will be particularly interested in commenting on the revisions.

Moreover, EPA is limiting the effectiveness of the interim final rule reaffirming the promulgation of these rule revisions and, during the period of the interim final rule's effectiveness, is providing a full opportunity for comment on the rule revisions. Specifically, EPA is providing that the interim final rule will be effective for one year and, simultaneously with this notice, is publishing in the **Federal Register** parallel notices of direct final and proposed rules that will provide the opportunity for comment on these rule revisions. If any timely adverse comment is submitted on the direct final rule, EPA will withdraw the direct final rule and may issue a final rule that changes the revisions and implements any such change in a manner that will not disrupt the ongoing operation of the Acid Rain Program and the SO₂ allowance market. In order to coordinate the interim final, direct final, and proposed rulemakings, EPA is making the interim final rule effective until December 15, 2009, unless the interim final rule is withdrawn on an earlier date by the direct final rule, or (if the direct final rule itself is withdrawn) the final rule, addressing these revisions.

For all of the above-discussed reasons, EPA finds, under 5 U.S.C. 553(b)(3)(B), that providing notice of proposed rulemaking and hearing and comment opportunity before making these revisions final on an interim basis is impracticable, unnecessary, and/or contrary to the public interest.

In addition, EPA also finds that there is good cause under 5 U.S.C. 553(d) to make this interim final rule—reaffirming the promulgation of the Acid Rain Program rule revisions—immediately effective upon publication in the **Federal Register**. As explained above, operation of the Acid Rain Program and the SO₂ allowance market in the near term would likely be significantly disrupted by any uncertainty over the effectiveness of most of the rule revisions. Further, no petitions for review of these revisions were filed, and no concerns or issues have been raised on the merits of any of the revisions in the proceedings concerning CAIR and the CAIR FIPs. EPA therefore finds that the effectiveness of the rule revisions should be made clear as soon as possible by making the interim final rule immediately effective upon publication.

III. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

In this notice, EPA is reaffirming, as an interim final rule, the promulgation of the non-CAIR- and non-CAIR-FIP-related revisions of the Acid Rain Program rules, which revisions were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs. EPA is reaffirming the following three types of non-CAIR- and non-CAIR-FIP-related revisions to the Acid Rain Program rules: (1) Revisions that implement source-level, rather than unit-level compliance with the allowance-holding requirement in the Acid Rain Program, effective on July 1, 2006; (2) revisions that expressly allow designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator, effective on June 27, 2006; and (3) revisions making technical changes to streamline and, in some cases, clarify the requirements of the Acid Rain Program, effective on June 27 and July 1, 2006 depending on the specific revision. Out of all the Acid Rain Program rule revisions that were finalized in the **Federal Register** notices that also finalized CAIR and the CAIR FIPs, the only revisions whose promulgation EPA is not reaffirming are those that are related to CAIR and the CAIR FIPs, i.e., those (which are described in detail in Section III.D of this preamble) that are necessary for implementation of the CAIR and CAIR FIP trading programs. This action will have no impact on those revisions.

A. Rule Revisions Implementing Source-Level Compliance

As noted above, on May 12, 2005, EPA finalized revisions to the Acid Rain Program rules to implement the allowance-holding requirement on a source-by-source, rather than on a unit-by-unit, basis. Specifically, these revisions require each source to hold (as of the allowance transfer deadline, which is generally March 1) an amount of allowances in its allowance tracking system account at least equal to the tonnage of SO₂ emissions for all Acid Rain Program units at the source for the preceding calendar year. These revisions replaced earlier Acid Rain Program rule language that instead required each unit to hold allowances in its own allowance tracking system account at least equal to the tonnage of SO₂ emissions for the unit in such calendar year.

For the reasons detailed in the Notice of Supplemental Proposal published on June 10, 2004 (69 FR 32,698–701) and adopted in the final rule published on May 12, 2005 (70 FR 25,296), EPA reaffirms its findings that: (1) Title IV is ambiguous concerning whether the allowance-holding requirement must be met on a unit-by-unit basis and so EPA has discretion in deciding what approach to adopt in the rules implementing Title IV; (2) it is important to provide additional compliance flexibility by allowing a unit at a source to use allowances from any other unit at the same source; and (3) many non-allowance-holding provisions of Title IV evidence a unit-by-unit orientation. For these reasons, as explained in the final CAIR (*id.*), EPA reaffirms its conclusion that the adoption of source-level compliance with the allowance-holding requirement reasonably balances these considerations. In balancing these considerations, EPA also reaffirms its conclusion that company-level compliance is not appropriate because it represents too much of a deviation from the unit-by-unit orientation in the non-allowance holding provisions of Title IV and is likely to require much more dramatic changes in the operation of the Acid Rain Program. *See* 69 FR 32,700. For example, company-level compliance would add to the compliance determination process complexities such as the need to identify the “company” in cases where owners or operators are organized using complex corporate or other ownership structures and to handle cases where ownership structures are changed, or units or sources are transferred among corporate or other entities, during the year. EPA

notes that these conclusions about source-by-source compliance address only compliance with the allowance-holding requirement, not with the emissions monitoring and reporting requirements, which continue to be applied unit by unit.

Because language reflecting or referencing the unit-by-unit compliance approach was included in many provisions throughout the earlier Acid Rain Program rules, a significant number of rule revisions was necessary to implement source-by-source allowance holding. Other than implementing the shift from unit-to source-level compliance, the rule revisions did not make any substantive changes to the revised provisions. Examples of the revisions necessary to implement source-based compliance are as follows:

1. The term “unit account” was replaced by “compliance account” in § 72.2 and, as appropriate, in every other provision of the Acid Rain Program rules in which the term appeared. Similarly, references to a “unit’s” account in the allowance tracking system were replaced by references to a “source’s” account. In addition, references to allowances held by a “unit” were changed to refer to allowances held by a “source.”

2. References to a “unit’s” Acid Rain emissions limitation for SO₂ were replaced by references to a “source’s” Acid Rain emissions limitation for SO₂ throughout the Acid Rain Program rules. Similarly, references to a “unit’s” SO₂ emissions for purposes of applying the SO₂ emissions limitation (or a “unit’s” excess emissions) were replaced, where appropriate, by references to the SO₂ emissions of the “affected units at a source” (or to a “source’s” excess emissions).

3. The provisions in §§ 72.90(b)(5) and 73.35(e) concerning the assignment of allowance deductions, for compliance with the allowance-holding requirement, among units at a common stack were removed. These provisions were made unnecessary by the shift from unit-to source-level compliance because all units at a common stack are necessarily at the same source.

4. The terms “compliance subaccount”, “future year subaccount”, and “current year subaccount” and their definitions were removed or replaced, as appropriate, throughout the Acid Rain Program rules. The earlier rules distinguished between two subaccounts in each unit account, i.e., a “compliance subaccount” for allowances usable for compliance in a given year and a “future year subaccount” for allowances not usable until a future year. Similarly,

the earlier rules referred to a “current year subaccount” and a “future year subaccount” of a general account. However, whether compliance was on a unit-or source-level, there was no need to use or refer to the subaccounts. In fact, the electronic allowance tracking system has never actually used subaccounts. *See* 69 FR 32,700. Consequently, for example, § 73.34(a) and (b)—providing that the allowance tracking system show in allowance accounts the holdings of allowances issued for 30 years and that each year the holdings of allowances issued for the new 30th year will be added—were revised to set forth these requirements without using the obsolete references to subaccounts.

5. The provision in § 73.35(b)(3) limiting the use of allowances from another unit at the same source for compliance was removed. In that provision, a unit that would otherwise have excess emissions was allowed to use a limited number of allowances from other units at the same source in order to reduce, but not to eliminate, the excess emissions. Such a limitation was unnecessary, and indeed was inconsistent, with source-based compliance.

6. The provision in § 74.4(c) allowing two designated representatives for the same source under certain circumstances was removed.² While it was workable to have one designated representative for a non-opt-in unit at a source and a different designated representative for an opt-in unit at the same source where compliance with the allowance-holding requirement was required on a unit-by-unit basis, EPA maintains that this is not workable where compliance is at the source-level and one individual must be responsible for compliance by all units at the source.

When EPA first proposed the Acid Rain Program rule revisions to implement source-based compliance, some commenters supported, and some opposed, the shift to source-by-source allowance holding. EPA addressed each of the comments opposing the change and reaffirms, in this notice, the responses to those comments. For

² In the Acid Rain Program rule revisions finalized in May 12, 2005 **Federal Register** notice certain language in § 74.4(c) was revised. However, in the revisions finalized in the April 28, 2006 **Federal Register** notice these § 74.4(c) revisions were superseded by entirely removing and reserving § 74.4(c) in light of the change from unit-to source-level compliance with the allowance-holding requirement. 71 FR 25379/2. While the April 28, 2006 rule revisions did not also remove all references to § 74.4(c), EPA is not reaffirming their promulgation since they refer to a non-existent provision (i.e., § 74.4(c)).

example, a commenter opposed the change claiming that a source-by-source allowance-holding requirement was “contrary to market-based principles.” In response, EPA rejected the comment, explaining that the adoption of source-by-source compliance preserves market-based principles. Whether compliance is unit-by-unit or source-by-source, the owner or operators of Acid Rain Program units still have the option to change or maintain emissions and/or to retain, purchase, or sell allowances and the responsibility to take whatever actions are necessary to ensure that enough allowances are held to cover emissions. The only difference between the types of actions taken under unit-level and source-level compliance is that, under unit-level compliance, the owners or operators must transfer an allowance from one unit at a source to a second unit at that source (except as discussed above concerning the removed § 73.35(b)(3)) in order to use the first unit’s allowances for compliance by the second unit, while under source-level compliance, any allowance held for compliance can be used—without a transfer—for compliance by any units at the source. While fewer allowance transfers may be needed with source-level compliance, the market price of allowances still plays a crucial role in owners’ or operators’ decisions on what actions to take (including whether to transfer allowances between sources). *See* 70 FR 25,296–97.

As a further example, a commenter opposed a source-level compliance because the NO_x Budget Trading Program (established under the NO_x State Implementation Plan Call (NO_x SIP Call) and aimed at reducing ozone season emissions) uses unit-level compliance but allows owners or operators to establish source-level overdraft accounts, in which may be held extra allowances usable for compliance by any unit at the source. In response, EPA rejected the comment, explaining that, based on experience with the Acid Rain and the NO_x Budget trading programs, EPA concluded that a source-level allowance-holding requirement results in a less complicated program and a reduced likelihood of owners or operators making inadvertent, minor errors that could result in significant excess emissions penalties and yet still achieves the trading program’s environmental goals. *See* 69 FR 32,699–700; and 70 FR 25,297.

As a further example, a commenter stated that EPA should revise the Acid Rain Program rules to allow owners or operators, each year, the option of

choosing whether to use unit-level or source-level compliance. In response, EPA rejected the comment, explaining that such an approach would significantly complicate the achievement by owners or operators, and the determination by EPA, of compliance. The potential for error (e.g., due to erroneous assumptions about whether unit-or source-level compliance would be applicable to a particular source for a particular year) on the part of owners or EPA would be significantly increased. EPA concluded that the only reasonable options for the allowance-holding requirement in the Acid Rain Program were to require either compliance by all sources each year on a unit-level basis or compliance by all sources each year on a source-level basis. *See* 70 FR 25,297.

For the reasons discussed above (including the reasons for rejecting the comments opposing source-level compliance), EPA reaffirms its promulgation of the revisions implementing source-level compliance.

B. Rule Revisions Allowing use of Agents by Designated Representative and Authorized Account Representatives

As noted above, in the April 28, 2006 **Federal Register** notice that also finalized the CAIR FIPs, EPA finalized revisions to the Acid Rain Program rules clarifying that designated representatives, authorized account representatives, and alternates may use agents to make electronic submissions to the Administrator. The revisions in §§ 72.26 and 73.33(g) clarified this by making this option explicitly available and establishing procedures and requirements for such use of agents.

EPA reaffirms its conclusion that the Acid Rain Program rules, even without these revisions, already allowed designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions. Specifically, the Acid Rain Program rules provided before the revisions were adopted, and continue to provide, for certain submissions (i.e., certificates of representation, applications for general account, allowance transfers, and quarterly emissions reports) required to be “in a format prescribed” or “in a format specified” by the Administrator. (The terms “prescribed” and “specified” have the identical meaning in these contexts.) These submissions may be made, and in the case of quarterly emissions reports must be made, electronically. The electronic formats prescribed by the Administrator for the Acid Rain Program allowed before the

revisions were adopted, and continue to allow, the designated representative, authorized account representative, or alternate, as appropriate, to designate other individuals (“agents”) who may make the electronic submissions for him and required that the designated representative, authorized account representative, or alternate be fully bound by the agent’s actions. (EPA notes that the NO_x Budget Trading Program includes analogous regulatory provisions for electronic submissions to the Administrator and prescribes analogous electronic formats.) *See* 71 FR 25,363–64 and 25,365.

Consequently, EPA reaffirms its conclusion that the references in the Acid Rain Program (as well as the NO_x Budget Trading Program) rules to “prescribed” or “specified” formats, coupled with the existing electronic formats, provide the legal authority necessary for designated representatives, authorized account representatives, and alternates to use agents to make electronic submissions to the Administrator. However, in order to remove any uncertainty about such legal authority and in order to provide more detail concerning the procedures and requirements for using agents, EPA also reaffirms the promulgation of the Acid Rain Program rule revisions that explicitly authorize, and govern, the use of agents for electronic submissions.

C. Rule Revisions Making Technical Changes

As noted above, in the May 12, 2005 and April 28, 2006 **Federal Register** notices that also finalized the CAIR and the CAIR FIPs, EPA finalized revisions to the Acid Rain Program rules making technical changes. In those notices, EPA generally categorized these technical revisions as changes that facilitated interaction among the trading programs administered by EPA under Title IV, the NO_x SIP Call, CAIR, and the CAIR FIPs. However, independent of any need to coordinate the Acid Rain Program with the CAIR and CAIR FIP trading programs, EPA maintains that these technical revisions streamline, and in some cases clarify, the requirements of the Acid Rain Program. Further, these revisions have been in effect, and used by, source owners, operators, designated representatives, and EPA since around mid-2006. Based on that experience with these technical revisions, EPA finds that they streamline and, in some cases, clarify the Acid Rain Program requirements without adversely affecting the achievement of, and compliance with, the emissions reductions required under Title IV. For reasons independent of CAIR and the

CAIR FIPs (including the above-stated reasons and the more detailed reasons discussed below), EPA reaffirms its promulgation of these revisions.

For example, some of the Acid Rain Program rule revisions clarified that EPA intended to use the original definition of "cogeneration unit" in § 72.2. EPA noted in the May 12, 2005 **Federal Register** notice that the Agency had recently changed the "cogeneration unit" definition in § 72.2 in June 2002 (67 FR 40394, 40420 (June 12, 2002)). The original definition in § 72.2 had been used since the commencement of the Acid Rain Program. The only significant difference between the original and revised definitions was that the former refers to a unit "having the equipment used to produce" electricity and useful thermal energy through sequential use of energy, while the latter simply refers to a unit "that produces" electricity and useful thermal energy in that manner. The reason that EPA gave for revising the definition in June 2002 was to conform with the definition in a rule issued under CAA section 126 related to the NO_x SIP Call. However, neither that rule nor the NO_x SIP Call actually specified a "cogeneration unit" definition. Consequently, there is no reason to use the June 2002 revised definition. Moreover, EPA is concerned that the change in the definition of "cogeneration unit" as of June 2002 may cause confusion or raise question about what units qualify for exemptions for "cogeneration units" from the Acid Rain Program. Under these circumstances, EPA concludes that the definition should be changed back to the original definition in § 72.2 and, in any event, intends to interpret the June 2002 revised definition as having the same meaning as the original definition.

As a further example, some Acid Rain Program rule revisions involved units meeting the requirements for new units and retired units exemptions under §§ 72.7 and 72.8. The revisions clarify that such units are treated as unaffected units under the Acid Rain Program but continue to be subject to any permitting requirements under parts 70 and 71 applicable to unaffected units.

As a further example, some Acid Rain Program rule revisions involved the certification that a designated representative must include with each submission made to the Administrator and the certificate of representation for a designated representative and an authorized account representative. The language in § 72.21(b)(1) for the certification of any submission by a designated representative and in § 72.24(a) and § 73.31(c)(1) for the certificates of representation was

streamlined by removing extraneous language. Not only does this streamline the language, but also makes the certification and certificates of representation essentially the same as in the NO_x Budget Trading Program under the NO_x SIP Call, which allows use of essentially the same forms for the two trading programs.

As part of this streamlining of language, § 72.24(a)(5), (a)(7), and (a)(10) and an analogous provision in § 73.31(c)(1)(v), setting forth certain required provisions for the certificate of representation, were removed as unnecessary. Among other things, this results in removal of the requirement of 1-day newspaper notice for the selection of designated representatives for sources subject to the Acid Rain Program, which was required in addition to submission to the Administrator of the certification of such selection. EPA believes that this notice requirement is unnecessary because information on the identity of designated representatives (as well as authorized account representatives) for Acid Rain Program sources and allowance accounts is already available to the public, as well as State permitting authorities, through on-line access to the allowance tracking system. This availability 24 hours a day on the allowance tracking system seems to be a much better way of ensuring interested persons access to the information than publication of a single notice in a local newspaper of which interested parties may or may not become aware. Consequently, EPA maintains that the newspaper notice requirement is obsolete and unnecessary.

In addition, the provisions listing the content of a certificate of representation for a designated representative were revised to clarify that the identification of each unit covered by the certificate of representation includes identification and nameplate capacity of each generator served by the unit. EPA believes that the current rule language requiring "identification" of each unit subject to the trading program is already broad enough to encompass such information concerning each generator served by the unit, particularly since the nameplate capacity of each generator served by a unit may determine whether and to what extent the unit is subject to requirements under the Acid Rain Program. However, in order to remove any uncertainty, EPA concludes that the revised language should be adopted to make it clear that generator information is required in the certificate of representation.

In addition, some of the Acid Rain Program rule revisions were technical

revisions to the provisions in § 72.23(c) concerning the reflection in certificates of representation of the owners and operators of the source and units involved. The changes make it clear that all owners and operators must be listed and that those that should be, but are not, listed are still bound by the certificate of representation.

EPA notes that the revised certification accompanying every submission and the revised certificate of representation have been widely used since mid-2006 without any adverse consequences. For all of the above reasons, EPA concludes that these streamlining and clarifying revisions concerning the certification and certificate of representation are appropriate for the Acid Rain Program.

As a further example of Acid Rain Program rule revisions, one revision involved elimination of the requirement in §§ 72.90 and 74.43 for owners and operators to submit an annual compliance certification report for each source. EPA notes that other provisions of the Acid Rain Program rules require designated representatives of owners and operators of sources subject to the Acid Rain Program to submit, with each quarterly emissions report, a certification that the monitoring and reporting requirements under part 75 of the Acid Rain Program rules have been met. *See* 40 CFR 75.64(c). The quarterly emissions reports are available on-line to the public and the States. In addition, owners and operators of Acid Rain Program sources must submit, under title V of the CAA, annual compliance certification reports concerning all CAA requirements, including all Acid Rain Program requirements. EPA also notes that it appears that, up to the time (around mid-2006) that the requirement to submit annual compliance certification reports under the Acid Rain Program was removed, few (if any) requests for copies of these annual compliance certification reports had been made by States or any other persons since the commencement of the Acid Rain Program. Apparently, other certifications and submissions required of owners and operators have been sufficient. Under these circumstances, EPA concludes that the separate Acid Rain Program annual compliance certification reports are duplicative and unnecessary.

As further examples of Acid Rain Program rule revisions, several involved removal of provisions in part 73 of those rules. One was the removal of § 73.32 (prescribing the contents of an allowance account), which has proved to be superfluous. Section 73.32 set forth a rather self-evident list of

information to be recorded in an allowance account in the allowance tracking system, such as the name of the authorized account representative, the persons represented by the authorized account representative, and the transfers of allowances in and out of the account. This section also stated that an allowance account must include a compliance or current year subaccount and a future year subaccount, as well as emissions information. Several items on this list of informational contents for allowance accounts are obsolete in that they do not reflect how the electronic allowance tracking system operated or will operate in the near future. As noted above, the electronic allowance tracking system has not actually ever used or referred to subaccounts. Also, emissions data, which, under § 73.32, were to be reflected in the allowance tracking system account, have always been available instead through the electronic emissions tracking system. Because the information list in § 73.32 contains either self-evident items or items that are obsolete and because the NO_x Allowance Tracking System has been operating successfully even though the NO_x Budget Trading Program rules lack a provision analogous to § 73.32, EPA concludes that § 73.32 should be removed.

Another provision removed in part 73 was § 73.33(c) requiring that the authorized account representative of a general account (i.e., an account for an entity (such as an allowance broker) other than an Acid Rain source) notify all owners of allowances in the account of any submissions made under the Acid Rain Program, unless the owner waived the requirement. EPA believes that, because the establishment of a general account (as distinguished from a compliance account) by owners of allowances is entirely discretionary, it is reasonable to leave it to those owners to determine whether and when they want notification from their authorized account representative.

Other provisions removed in part 73 were § 73.37(a) through (c) and (e) through (f). EPA concludes that these provisions should be removed because the claim of error procedure has never been used and so has proved to be superfluous. The provision in § 73.37(d), setting forth the Administrator's ability to correct, on his own motion, any type of error that he finds in an allowance tracking system account remains, renumbered as § 73.37.

Another provision removed in part 73 was § 73.51. Section 73.51 prohibited the transfer of allowances from a future year subaccount to a subaccount for an earlier year. The removal of this section

is consistent with the elimination throughout the rest of the Acid Rain Program rules of any references to subaccounts. Further, the prohibition on using allowances allocated for a year to meet the allowance-holding requirement for a preceding year is retained in other provisions of the Acid Rain Program rules, e.g., §§ 72.9(c)(5) and 73.35(a)(1).

As further examples, §§ 73.50 and 73.52 were revised to remove superfluous language. Language referring to "subaccounts" was removed as obsolete. Language referring to allowance transfers in perpetuity was also removed since such transfers can be made under these sections without such language. Further, the requirement in § 73.50(b)(3)—that transfers of allowances, after the allowance transfer deadline but before completion of compliance determinations concerning the allowance-holding requirement, were not recorded until such completion if the transferred allowances were usable for compliance—was removed and then restated in § 73.52(b) without using the obsolete reference to compliance subaccounts.

EPA notes that these revisions to part 73 have been in effect since mid-2006 without any adverse consequences. For all of the above reasons, EPA concludes that these streamlining revisions are appropriate for the Acid Rain Program.

As a further example, the Acid Rain Program rule revisions included revising § 74.42. This section was revised to remove references of subaccounts and still preserve the existing requirement that allowances allocated for a future year for an opt-in unit cannot be transferred to another unit before completion of the determination of compliance with the allowance-holding requirement (including the deduction of allowances to account for the opt-in unit's emissions and reduced utilization). EPA concludes that these streamlining revisions are appropriate for the Acid Rain Program.

D. Identification of Specific Rule Revisions Whose Promulgation is Reaffirmed

In this interim final rule, EPA is reaffirming the promulgation of all of the revisions of the Acid Rain Program rules that were finalized in the May 12, 2005 final rulemaking notice that also finalized CAIR (70 FR 25,333–39) and the April 28, 2006 final rulemaking notice that also finalized the CAIR FIPs (71 FR 25,377–80) *except* the following revisions:

1. For § 72.2, item 2.l (70 FR 25,334/1 (adding language referencing § 74.4(c), which is entirely removed and reserved

in the revisions in the April 28, 2006 notice));

2. For § 73.35, item 9.f (70 FR 25,335/3 (adding a new paragraph providing that an allowance deducted or otherwise permanently retired in accordance with CAIR or the CAIR FIPs is not available for compliance with the allowance-holding requirement in the Acid Rain Program));

3. For § 74.4, item 2.b (70 FR 25,336/3 (revising § 74.4(c)(2), which is entirely removed and reserved in the revisions in the April 28, 2006 notice));

4. For § 74.40, in item 4.b, the addition of the language "or the opt-in source has, under § 74.4(c), a different designated representative than the designated representative for the source" (70 FR 25,336/3 (adding language referencing § 74.4(c), which is entirely removed and reserved in the revisions in the April 28, 2006 notice));

5. For § 78.1, items 3.a and 3.c (70 FR 25,338/1 (referencing the CAIR model trading rules, subparts AA through IIII of part 96));

6. For § 78.3, items 4.a through 4.d (70 FR 25,338/2–3 and 25,339/1 (adding language referencing the CAIR designated representative, the CAIR authorized account representative, and the CAIR model trading rules, subparts AA through IIII of part 96));

7. For § 78.4, item 5 (70 FR 25,339/1 (adding language referencing the CAIR designated representative and the CAIR authorized account representative));

8. For § 78.12 item 7.b (70 FR 25,339/1 (adding language referencing the CAIR permit));

9. For § 78.1, item 2.b (71 FR 25,379/2 (adding language referencing the CAIR FIPs trading rules, subparts AA through IIII of part 97)); and

10. For § 78.3, items 3.a through 3.c (71 FR 25,379/3 and 25,380/1–2 (adding language referencing the CAIR FIPs trading rules, subparts AA through IIII of part 97)).

IV. 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 is therefore not subject to review under the Executive Order. In this action, EPA is simply reaffirming the promulgation of Acid Rain Program rule revisions that were previously issued and are currently in effect and have been since mid-2006.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule

simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR Parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden. Moreover, EPA maintains that the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, e.g., by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act and CAA section 307(d), it 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), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, the effect of these revisions was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory

requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This 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. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. 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." This rule does not have tribal implications, as specified in Executive Order 13175. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on 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 rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not based on health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled "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 and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 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 rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

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 has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

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). This rule will be effective on December 15, 2008 for good cause found as explained in Section II of this preamble.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. E8-29382 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070920529-81555-02]

RIN 0648-AW05

Magnuson-Stevens Act Provisions; Limited Access Privilege Programs; Individual Fishing Quota Referenda Guidelines and Procedures for the New England Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the National Marine Fisheries Service

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing guidelines and procedures for the New England Fishery Management Council (NEFMC) and the Gulf of Mexico Fishery Management Council (GMFMC) (collectively the Councils) and NMFS to follow in determining procedures and voting eligibility requirements for referenda on Individual Fishing Quota (IFQ) program proposals in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Magnuson-Stevens Act). The intended effect of these procedures and guidance is to help develop IFQ program referenda in the New England and Gulf of Mexico fisheries that are fair and equitable.

DATES: This rule is effective January 14, 2009.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from the mailing address listed here or by calling Robert Gorrell, NMFS-SF, 1315 East-West Highway, Silver Spring, MD 20910 (also see **FOR FURTHER INFORMATION CONTACT**).

This **Federal Register** document is also accessible via the Internet at: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

FOR FURTHER INFORMATION CONTACT:

Robert Gorrell, at 301-713-2341 or via e-mail at robert.gorrell@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published the proposed rule for this action in the **Federal Register** on April 23, 2008 (73 FR 21893) with a public comment period through June 23, 2008. NMFS received comments from 11 commenters. Responses to these comments are discussed under the Comments and Responses section of this preamble.

Section 303A of the Magnuson-Stevens Act specifies general requirements for Limited Access Privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition encompasses exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the NEFMC and GMFMC. Specifically, the Magnuson-Stevens Act requires such program proposals to be approved through referenda before they may be submitted for review and implementation by the Secretary of Commerce (Secretary). Additionally, the Magnuson-Stevens Act requires the Secretary to publish guidelines and procedures to (1) determine procedures and voting eligibility requirements for IFQ program referenda, and (2) to conduct such referenda in a fair and equitable manner.

A referendum conducted on a NEFMC IFQ program proposal must be approved by more than 2/3 of those voting in the referendum among eligible permit holders and other eligible voters. The Magnuson-Stevens Act requires that the Secretary promulgate criteria to determine whether additional fishery participants are eligible to vote in NEFMC IFQ program referenda, in order to ensure that crew members who derive a significant percentage of their total income from a proposed IFQ fishery are eligible to participate in an IFQ referendum.

A referendum conducted on a GMFMC IFQ program proposal must be approved by a majority of those voting in the referendum. For Gulf of Mexico fisheries managed with multispecies permits, the Magnuson-Stevens Act limits eligible referenda voters to those permit holders who have substantially fished the species to be included in the proposed IFQ program.

This final rule establishes procedures for initiating, conducting, and determining the outcome of IFQ program referenda, as well as guidelines for specifying referenda voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable, while providing the flexibility to develop IFQ program referenda voting eligibility requirements on a fishery-specific basis, in accordance with the Magnuson-Stevens Act and other applicable law.

These procedures and guidelines also would apply to referenda conducted in association with any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Any Secretarial IFQ program proposal must be approved by a majority of the voting members, present and voting, of the appropriate Council before it can be included in a Secretarial FMP or FMP amendment.

For a discussion of these procedures and guidelines, i.e., initiating referenda, voter eligibility, ensuring referenda are fair and equitable, conducting referenda, and deciding referenda, please see the preamble to the proposed rule published on April 23, 2008 (73 FR 21893).

Comments and Responses

The public comment period on the proposed rule closed on June 23, 2008. A total of 11 commenters submitted comments (via e-mail, fax, and regular mailing) to NMFS on behalf of five individual fishermen, the New England Fishery Management Council, and five non-governmental organizations with fisheries and environmental interests. These organizations were the Associated Fisheries of Maine, the Southern Shrimp Alliance, Inc., the Environmental Defense Fund, the Food & Water Watch, and the Ocean Conservancy. Their comments are summarized and responded to below.

Comment 1: A number of respondents offered comments relative to specific IFQ programs (both existing and in development) rather than commenting

on the proposed procedures and guidelines for conducting a referendum.

Response: These comments are outside the scope of this action. NMFS acknowledges the comments but will not respond in this document. Opportunities for public comment on specific IFQ programs are available or will be during the normal Council plan amendment and rulemaking processes.

Comment 2: The rule would establish rather broad guidelines within which the Councils would develop IFQ referendum voter eligibility criteria and referendum details. Several respondents supported the flexibility afforded by the broad guidelines, noting that they provided Councils with the ability to prepare criteria and program details suited specifically to the proposed IFQ fishery. One member of the public stated that the guidelines are overly broad and give NMFS unbridled discretion, which may result in an unfair and inequitable referendum, especially from the perspective of owners of small vessels. Another supported the broadness of the guidelines, indicating that the referenda need to be developed on a case-by-case basis and suggesting that more detailed or constrained guidelines would likely be too complicated to execute.

Response: The fisheries managed by the New England and Gulf of Mexico Fishery Management Councils vary greatly in terms of number of participants, geographic range, fishing method, and value. The IFQ program proposals could introduce even more variability to the situations and issues to be addressed by the Councils as they develop referendum eligibility criteria. Rather than constrain the Councils with detailed referendum eligibility requirements, and in order to accommodate the potential variety of IFQ proposals and voter situations, NMFS has decided to set general eligibility standards and referendum procedures at this time. More specific criteria and procedures for each proposed IFQ program will be developed by the Councils and implemented by NMFS when the details of the IFQ program proposals are known. The Councils, when requesting that NMFS conduct an IFQ referendum, would have to analyze the recommended eligibility criteria and justify the criteria selected.

Although the proposed rule contained general eligibility requirements for referendum participation, the guidelines do not give NMFS or the Councils "unbridled discretion" in this regard. NMFS and the Councils will develop referendum eligibility requirements for proposed IFQ programs consistent with

the Magnuson-Stevens Act, including the National Standards, and other applicable law.

The procedures and guidelines are neutral relative to vessel size, past landings, and other criteria that may factor into voter eligibility. These procedures and guidelines do not favor large vessels over small vessels, or vice versa. IFQ programs can be designed by the Councils to reflect a wide variety of Council and public priorities. Accordingly, the Councils will have the discretion to establish a vote weighting system or to count votes on a per permit basis, to meet these priorities while providing meaningful participation for each fishery segment.

Comment 3: Under the proposed rule, those participants in a Gulf of Mexico fishery who have substantially fished the species under consideration in an IFQ program would be eligible to vote in the referendum. One respondent stated that it is unfair to define "participants who have substantially fished" as those permit holders with larger vessels, concluding this would disenfranchise the small vessel fishermen in the Gulf of Mexico. Another respondent stated this provision would discriminate against small boat operators. A third respondent stated that all those having fished the species being considered in the IFQ program should be eligible to vote in the referendum. Two respondents were in favor of the substantially fished provision because they advocate for the position that the fate of the IFQ program appropriately rests with participants who have a vested interest in the proposed IFQ fishery.

Response: The Magnuson-Stevens Act limits eligible voters in a referendum for a Gulf of Mexico multispecies fishery to holders of multispecies permits who have "substantially fished" the species to be included in the proposed IFQ program. However, the Magnuson-Stevens Act does not define "substantially fished." The definition of "substantially fished" may vary for each IFQ program because the Council will take into consideration various eligibility criteria including past and present participation in the fishery, and the full range of entities likely to be eligible for initial IFQ allocations, as well as other factors to be determined by the Council. There will be opportunities to comment on referendum eligibility criteria for specific IFQ program proposals in the rulemaking procedures undertaken for those proposals.

Comment 4: Two respondents stated that applying differential weighting to referendum votes would be unfair and would exclude or diminish the

importance of smaller scale fishing community members. Two other respondents expressed their support of vote weighting. One noted that vote weighting could help to ensure permit holders in the Gulf of Mexico who "substantially fished" would largely influence the outcome of the referendum.

Response: The rule provides for the possibility of vote weighting, but it does not require weighting; furthermore, the rule does not specify any criteria for weighting votes. For instance, the New England Council could develop a referendum proposal that does not weight votes at all; or it could apply a weighting formula that considers a variety of parameters, such as landings, vessel size, time in the fishery, amount of fishing activity, number of crew, etc. Depending on the goals of the Council and the proposed IFQ program, these parameters could balance the way certain sectors of the fishery participate in the referendum. For example, if an IFQ proposal is likely to affect the small boat inshore fleet, votes could be weighted to ensure smaller vessels are reasonably represented in the outcome of the referendum.

NMFS will use these guidelines and procedures to assure fair and equitable referenda. In assessing whether Council recommendations for referenda criteria are fair and equitable, NMFS will take into account, among other things, whether the criteria are rationally related to the proposed IFQ program and whether the criteria prevent any person or other entity from obtaining an excessive share of the voting privileges. Also, NMFS will evaluate the criteria in light of the National Standards under the Magnuson-Stevens Act. These considerations should help the Council and NMFS balance the goals of the program with the eligibility criteria and any vote weighting criteria, ensuring that no segment of the fishery is unduly disadvantaged by the referendum process.

Comment 5: One respondent stated that the application of a control date and establishment of a voter eligibility criterion of fishing activity relative to the control date would be unfair and inequitable. The respondent cited a new vessel owner's lack of access to the prior owner's landings history as the cause for this concern.

Response: The procedures and guidelines for conducting a referendum state that Councils should consider past and present harvest and participation in the fishery when establishing voter eligibility criteria. They do not specify how the Council must determine and assess past participation. Councils may

use multiple ways to determine eligibility. Setting a control date, in conjunction with landings or vessel activity requirements from a set of qualifying years, is a possible criterion, but others are also possible; for instance, current year activity may be another important consideration in determining voter eligibility.

Because the procedures and guidelines do not specify the use of a control date, the respondent's concern would be better addressed to the Council during the development of specific IFQ program proposals and referendum criteria.

Comment 6: Of the two alternatives considered for timing of the IFQ referendum initiation letter, respondents supported the somewhat compressed referendum schedule. One commenter stated that NMFS should conduct the referendum within 60 days of receiving the Council's initiation letter. Another requested that NMFS provide time frames for responding to referendum requests and for conducting the referendum.

Response: NMFS has provided for the compressed schedule alternative in the final rule to expedite implementation of IFQ referenda. The measure allows the Council's referendum initiation request to be submitted after the Council has solicited and considered public comment and has selected preferred alternatives for the proposed IFQ program. This approach, unlike the alternative noted in the preamble of the proposed rule, does not require that the FMP or FMP amendment document be completed prior to requesting the referendum. Though the procedures and guidelines specify that the compressed schedule alternative may be used, a Council would have the option to complete its FMP document before submitting the referendum initiation request to NMFS.

The Councils and NMFS will execute the referendum as expeditiously as possible. The amount of time NMFS will need to conduct a referendum after submission of the initiation request is very difficult to determine. The length of time will depend on many factors, including the complexity of the eligibility or weighting criteria, the quality of the data supporting the eligibility criteria, and the number of entities involved. Any eligibility process that relies on landings data, for example, will have to include time for notification of industry members and may also include an appeals process for potential participants. On the other hand, a simple eligibility criterion requiring only that one have an active permit could be more quickly executed.

When the Council submits a specific referendum initiation request, NMFS may announce an estimated timeline for the execution of the referendum. The IFQ referendum will be executed through rulemaking. The process of drafting, clearing, and publishing the proposed rule, along with a period for public comment and preparation and publication of the final rule is likely to take more than 60 days to complete.

The proposed rule stated that the referendum rulemaking would establish a deadline for receiving ballots from eligible voters. Since a referendum in New England must accommodate the possibility of crew members participating, the window for submitting ballots may need to be generous. Crew members who are potentially eligible to vote will need time to contact NMFS, have their eligibility credentials validated, and then submit the completed ballot. After the ballots are received by NMFS, the procedures and guidelines allow up to 60 days for NMFS to determine and announce the result of the referendum.

Comment 7: A referendum conducted for a New England fishery must provide for the possibility of voting by crew members who meet all eligibility criteria, including certain income requirements. Several respondents commented on the documentation that would be needed to prove a crew member's income and period of service on a referendum-eligible vessel. One respondent specified that a crew member should be made to present pay records correlated with tax filings, as well as notarized statements from vessel owners documenting the crew member's service aboard the vessel. One respondent opposed the idea of crew members self-certifying their own compliance with the eligibility criteria (under threat of prosecution for making a false statement to the government), while another respondent supported the approach.

Response: NMFS does not collect or maintain any data on the participation and income of crew members in any New England fishery. The practices of hiring crew members and documenting their labor are believed to vary widely across the region and between fisheries. Due to these factors, the procedures and guidelines specify that the availability of documentary proof of employment and income to validate eligibility be among the Council's considerations as it develops the voter eligibility criteria recommendations specific to the subject fishery.

NMFS aims to guard against setting documentation standards that are unattainable for potentially eligible

crew members. Also, NMFS hopes to execute referenda expeditiously. Accordingly, the procedures and guidelines allow for a referendum to occur in which crew members would self-certify that they meet eligibility criteria. The Council may adopt self-certification in its eligibility criteria recommendation or may specify other documentation requirements.

Comment 8: One respondent suspected that the crew member eligibility process could be subject to abuse in attempts to affect the outcome of a referendum. The writer suggested that NMFS pay close scrutiny to crew member eligibility documentation presented by the family members of vessel owners.

Response: All documentation presented to NMFS to support claims of voter eligibility will be reviewed. Suspect materials will be turned over to the NOAA Fisheries Office for Law Enforcement for investigation and possible enforcement action.

Comment 9: Under the procedures and guidelines, one of NMFS's considerations for determining whether a referendum is likely to be fair and equitable is whether the criteria are designed to preclude any single entity from obtaining an excessive share of voting privileges. One respondent questioned NMFS's use of the term "excessive share," stating that it is undefined, and suggesting that a definition be implemented through new rulemaking.

Response: The requirement for NMFS to ensure that no single entity gains an excessive share of the voting privileges is analogous to a similar provision in the Magnuson-Stevens Act regarding limited access privilege programs (LAPPs). The maximum share limit has to be set relative to the fishery for which the IFQ program is being proposed; NMFS will not define the term "excessive share" in the procedures and guidelines, but will apply the term analogously with its usage in section 303A of the Magnuson-Stevens Act. The Council will have to determine a standard for excessive share specific to each proposed IFQ program. NMFS will consider the Council's standard for excessive share when applying the term to the referendum and when determining if the referendum is likely to be fair and equitable.

Comment 10: One commenter proposed to preclude certain non-vessel entities that may hold permits from participating in a referendum. The respondent specifically mentioned non-profit organizations and permit banks as the sorts of entities that should be excluded. The argument for the

exclusion is that such entities do not represent traditional, historic, and cultural participation, and economic investment in fisheries.

Response: By design, consistent with the general provisions of section 303A of the Magnuson-Stevens Act, the procedures and guidelines for conducting an IFQ referendum are general so that they may be applied to all New England and Gulf of Mexico fisheries and support a wide range of Council priorities. The procedures and guidelines do not aim to exclude or place at a disadvantage any entity in the fishing community.

The eligibility criteria for each IFQ referendum will be developed by the Councils through their public processes and will likely be based on the IFQ program proposal itself. The exclusion of any type of entity, including non-profit organizations and permit banks, from the referendum will have to be fully justified by the Councils in their referendum initiation requests.

Comment 11: A commenter from New England suggested that vote weighting could be used to limit the relative influence of non-vessel entities, such as permit banks, that own large blocks of permits.

Response: NMFS acknowledges this point. Vote weighting will be available to the Councils and may be applied in the referendum, so long as the recommended weighting criteria are rationally connected to the proposed IFQ program and meet NMFS's other considerations for determining that a referendum is likely to be fair and equitable. If the Councils choose to recommend vote weighting, the referendum initiation request must justify the weighting criteria and analyze alternatives to the recommended criteria.

Comment 12: The rule would require that the referendum ballot seek approval or disapproval of the IFQ program proposal. The rule also allows that, after an IFQ proposal fails to be approved by referendum, the Council may make changes to the program proposal or explain a change of circumstances in the fishery that would warrant an additional referendum, and request that NMFS conduct a subsequent referendum. One commenter, a proponent of IFQs, suggested that the rule provide for the referendum ballot to include survey questions in order to direct changes to the IFQ program proposal, should the initial referendum fail.

Response: NMFS does not support this recommendation. Section 303A(c)(6)(D) of the Magnuson-Stevens Act requires that the referendum consider the IFQ program proposal "as

ultimately developed.” NMFS will not publish a final rule on referendum procedures for a specific fishery until the Council has solicited and considered public comment and selected preferred alternatives for a proposed IFQ program. The purpose of the referendum is to determine approval or disapproval of the proposed IFQ program, rather than as a mechanism to solicit feedback on the specific alternatives of the program.

However, should NMFS and the Council(s) decide that additional information would be helpful for further development of IFQ program proposals, NMFS may include additional IFQ program materials in the envelope when the ballot is distributed to eligible voters. Survey questions or supplemental information would be separate from the ballot, and submission of a completed survey would have no effect on the validity of the ballot.

Changes from the Proposed Rule

The following table identifies substantive changes from the proposed rule that were made for purposes of clarification.

Section	Effect
§ 600.1310(a) Purpose and scope of referendum	Notes that § 600.1310 contains guidance on vote weighting as well as voter eligibility.
§ 600.1310(b)(2)(v) Initiating IFQ referendum	Requires a Council recommending vote weighting to include the rationale and expected effects for such weighting in its letter requesting initiation of a referendum.
§ 600.1310(c)(1)(iii)(C) Permit holders and other fishery participants	Clarifies that the developer of eligibility criteria permit holders and other fishery participants must consider factors determined by the Council “with jurisdiction over the fishery for which an IFQ program is proposed” to be relevant.

Section	Effect
§ 600.1310(c)(2)(ii)(A) and (B) Crew member eligibility in NEFMC IFQ referendum	Adds “during the qualifying period(s)” to (A) and changes “the eligibility period(s)” to “the qualifying period(s)” in (B).
§ 600.1310(c)(2)(iii)(E) Crew member eligibility in NEFMC IFQ referendum	Clarifies that the developer of eligibility criteria for fishery participants, including crew members, must consider any factors determined by the Council “with jurisdiction over the fishery for which an IFQ program is proposed” to be relevant.
§ 600.1310(c)(3)(iii) GMFMC’s substantially fished criterion	Clarifies that the developer of eligibility criteria for multispecies permit holders who have substantially fished the species, must consider any factors determined by the Council “with jurisdiction over the fishery for which an IFQ program is proposed” to be relevant.
§ 600.1310(d) Council–recommended criteria	Substitutes the words “apply the same” for “consider” in “A Council may also consider criteria for weighting eligible referendum votes”.
§ 600.1310(h)(2) and (h)(3) Determining the outcome of an IFQ referendum	Changes from “of those voting submit valid ballots in favor of” to “of the votes submitted on valid ballots are in favor of”.

Section	Effect
a new § 600.1310(g)(4) Referenda ballots	Stipulates that the value of weighted votes must be indicated on the ballot and a weighted vote must be cast as a single unit (i.e., the value may not be split). The full value must be applied to the selection made on the ballot. The old § 600.1310(g)(4) was renumbered as § 600.1310(g)(5).

Also, other minor changes have been made to improve the clarity and readability of the regulatory text.

Classification

The Magnuson–Stevens Act

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with the Magnuson–Stevens Act as amended.

E.O. 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) at the proposed rule stage, as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts the proposed regulation may have on small entities. Small entities within the scope of the rule include individual fish–harvesting vessels. NMFS intended the analysis to aid in the consideration of regulatory alternatives that could minimize the economic impact on affected small entities. No comments were received from the public on the IRFA or specific economic impacts of the proposed rule.

This rule merely provides broad guidance and sets out procedures for subsequent rules with the intended effect of ensuring that IFQ program referenda are fair and equitable. While the benefits of ensuring that IFQ program referenda are fair and equitable are believed considerable; analysis of data and impacts on vessels, vessel revenues, port revenues, fish stock impacts, etc. is not possible in the absence of identifying specific fisheries and IFQ program proposal components. Estimated direct economic impacts would be evaluated in compliance with the Regulatory Flexibility Act and other

applicable Federal law at the time fishery-specific program proposals are developed. NMFS did perform an analysis of this rule and did not find any basis to conclude that small business entities would be adversely affected by this rule. Therefore, NMFS is certifying non-significance to the Chief Counsel for Advocacy of the Small Business Administration.

A more-detailed description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of the proposed rule (73 FR 21893).

Paperwork Reduction Act

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 9, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. Add subpart O consisting of §§ 600.1300 through 600.1310 to read as follows:

Subpart O—Limited Access Privilege Programs

Sec.

600.1300—600.1309 [Reserved]

600.1310 New England and Gulf of Mexico Individual Fishing Quota Referenda.

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

Subpart O—Limited Access Privilege Programs

§§ 600.1300—600.1309 [Reserved]

§ 600.1310 New England and Gulf of Mexico Individual Fishing Quota Referenda.

(a) *Purpose and scope.* This section establishes procedures and guidelines for referenda to be conducted on Individual Fishing Quota (IFQ) program proposals developed by the New England Fishery Management Council (NEFMC) and the Gulf of Mexico Fishery Management Council (GMFMC). These procedures and guidelines also apply to IFQ program proposals developed by NMFS for fisheries under the jurisdiction of the NEFMC or GMFMC, except for certain provisions that only apply to a fishery management

council. This section provides guidance on developing voter eligibility and vote weighting, and establishes general procedures to ensure referenda are conducted in a fair and equitable manner.

(b) *Initiating IFQ referenda.* (1) The NEFMC and the GMFMC shall not submit, and the Secretary shall not approve, an FMP or FMP amendment that would create an IFQ program until the IFQ program proposal, as ultimately developed, has been approved by a referendum of eligible voters. Paragraph (h) of this section provides criteria for determining the outcome of IFQ referenda.

(2) To initiate a referendum on a proposed IFQ program:

(i) The relevant Council must have held public hearings on the FMP or FMP amendment in which the IFQ program is proposed;

(ii) The relevant Council must have considered public comments on the proposed IFQ program;

(iii) The relevant Council must have selected preferred alternatives for the proposed IFQ program;

(iv) The chair of the Council with jurisdiction over such proposed IFQ fishery must request a referendum on the proposed IFQ program in a letter to the appropriate NMFS Regional Administrator;

(v) The letter requesting initiation of a referendum must recommend voter eligibility criteria that are consistent with the applicable requirements of paragraph (c)(1) of this section and may also include recommended criteria for vote weighting. The letter must provide the rationale supporting the Council's recommendation, as well as such additional information and analyses as needed, consistent with applicable law and provisions of this section. If a Council recommends vote weighting criteria, the letter should fully describe the rationale for and the expected effects of such weighting on the referendum;

(vi) NEFMC referenda initiation letters must: recommend criteria that are consistent with paragraph (c)(2)(iii) of this section for NMFS to use in determining the eligibility of other fishery participants to vote in the referendum; include the minimum percentage of a crew member's total income that must have been earned during the eligibility periods in the proposed IFQ fishery as discussed in paragraph (c)(2)(ii) of this section; and include criteria for "referendum eligible vessels" as described in paragraph (c)(2)(i) of this section; and

(vii) GMFMC letters initiating referenda of multispecies permit holders in the Gulf of Mexico must include

recommended criteria to be used in identifying those permit holders who have substantially fished the species to be included in the proposed IFQ program, along with alternatives to the recommendation, and supporting analyses. Guidelines for developing such recommendations are provided at paragraph (c)(3) of this section.

(3) Following a referendum that has failed to approve the IFQ proposal, any request from a Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

(c) *Referenda voter eligibility—(1) Permit holders and other fishery participants.* (i) To be eligible to vote in IFQ referenda, permit holders and other fishery participants must meet voter eligibility criteria.

(ii) Holders of multispecies permits in the Gulf of Mexico must have substantially fished the species proposed to be included in the IFQ program to be eligible to vote in a referendum on the proposed program.

(iii) When developing eligibility criteria for permit holders in an IFQ program referendum, the relevant Council or Secretary must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota allocation under the proposed IFQ program;

(B) Current and historical harvest and participation in the fishery; and

(C) Other factors as may be determined by the Council with jurisdiction over the fishery for which an IFQ program is proposed to be relevant to the fishery and to the proposed IFQ program.

(2) *Crew member eligibility in NEFMC IFQ referenda.* (i) For the purposes of this section, "referendum-eligible vessel" means a vessel, the permit holder or owner of which has been determined to be eligible to vote in the referendum on the basis of such vessel's history or other characteristics.

(ii) To be eligible to vote in an NEFMC IFQ referendum, crew members must meet the following requirements:

(A) The crew member must have worked aboard a referendum-eligible vessel at sea, during the qualifying period(s), while the vessel was engaged in fishing;

(B) If requested, the crew member must produce documentary proof of employment or service as a crew member and income during the qualifying periods. Documents that may

be required include, but are not limited to, signed crew contracts, records of payment, settlement sheets, income tax records, a signed statement from the permit holder, and other documentary evidence of the period of employment and the vessel upon which the crew member worked;

(C) During the qualifying period(s), the crew member must have derived a percentage of his/her total income from the fishery under the proposed IFQ program that is equal to or greater than the percentage determined to be significant relative to the economic value and employment practices of the fishery; and

(D) Any additional eligibility criteria promulgated by the NMFS.

(iii) When developing criteria for determining whether other fishery participants, including crew members, may participate in a NEFMC IFQ referendum, the Council or Secretary must consider, but is not limited to considering:

(A) The full range of entities likely to be eligible to receive initial quota under the proposed IFQ program;

(B) A crew member's current and historical participation in the fishery aboard a referendum-eligible vessel;

(C) The economic value of the proposed IFQ fishery, employment practices in the proposed IFQ fishery, and other economic and social factors that would bear on a determination of what percentage of a crew member's total income from the fishery should be considered significant for the purposes of this section;

(D) The availability of documentary proof of employment and income to validate eligibility; and

(E) Any other factors as may be determined by the Council to be relevant to the fishery and the proposed IFQ program.

(3) *GMFMC's substantially fished criterion.* When developing criteria for identifying those multispecies permit holders who have substantially fished the species to be included in the IFQ program proposal, the Council or Secretary must consider, but is not limited to considering:

(i) Current and historical harvest and participation in the fishery;

(ii) The economic value of and employment practices in the fishery; and

(iii) Any other factors determined by the Council with jurisdiction over the fishery for which an IFQ program is proposed to be relevant to the fishery and the proposed IFQ program.

(d) Council-recommended criteria under paragraph (c) of this section may include, but are not limited to, levels of

participation or reliance on the fishery as represented by landings, sales, expenditures, or other considerations. A Council may also apply the same criteria for weighting eligible referendum votes.

(e) *Actions by NMFS: Review of Council referendum criteria and Secretarial IFQ plans.* (1) NMFS shall determine whether Council recommended referendum criteria will provide for a fair and equitable referendum and will be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards. The Secretary's considerations shall include, but shall not be limited to:

(i) Whether the criteria are rationally connected to or further the objectives of the proposed IFQ program;

(ii) Whether the criteria are designed in such a way to prevent any person or single entity from obtaining an excessive share of voting privileges;

(iii) Whether the criteria are reasonable relative to the availability of documentary evidence and the possibility of validating a participant's eligibility; and

(iv) Whether the referendum can be administered and executed in a fair and equitable manner, in a reasonable time, and without subjecting industry members, the Council, or NMFS to administrative burdens, costs or other requirements that would be considered onerous.

(2) If NMFS determines that referendum criteria would not provide for a fair and equitable referendum; would not be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; or, in the case of a referendum request subsequent to a failed referendum in the same fishery, that the Council has not substantively amended the IFQ proposal or circumstances have not changed sufficiently to warrant initiation of a new referendum, NMFS shall inform the Council of the Agency's decision to deny the referendum request and of the reasons for the decision.

(3) If NMFS determines that referendum criteria would provide for a fair and equitable referendum and would be consistent with national standards and other provisions of the Magnuson-Stevens Act, and other applicable legal standards; then NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(4) In accordance with paragraphs (c)(2) and (3) of this section, NMFS may initiate a referendum and promulgate

referendum criteria for any IFQ program proposal advanced through a Secretarial fishery management plan (FMP) or FMP amendment under the authority of section 304(c) of the Magnuson-Stevens Act for a New England or Gulf of Mexico fishery. Such criteria must provide for a fair and equitable referendum and NMFS shall conduct the referendum in accordance with procedures and guidelines provided in paragraph (f) of this section.

(f) *Conducting IFQ referenda.* (1) NMFS shall promulgate specific referenda procedural requirements, voter eligibility requirements, and any vote weighting criteria through appropriate rulemaking.

(i) *Proposed rule.* A proposed rule shall seek public comment on the specific schedule, procedures, and other requirements for the referendum process.

(A) For NEFMC IFQ program referenda, the proposed rule shall establish procedures for documenting or certifying that other fishery participants, including crew members, meet the proposed voter eligibility criteria.

(B) For GMFMC IFQ program referenda for multispecies permit holders, the proposed rule shall include criteria to be used in identifying those permit holders who have substantially fished the species that are the subject of the proposed IFQ program.

(ii) *Final rule.* (A) If NMFS decides to proceed with the referendum after reviewing public comments, NMFS shall publish implementing regulations through a final rule in the **Federal Register** as soon as practicable after the Council determines the IFQ program proposal and supporting analyses are complete and ready for Secretarial review. Otherwise, NMFS shall publish a notice in the **Federal Register** to inform the Council and the public of its decision not to conduct the referendum, as proposed, including reasons for the Agency's decision.

(B) Upon implementation of the referendum through a final rule, NMFS shall provide eligible voters referenda ballots and shall make available information about the schedule, procedures, and eligibility requirements for the referendum process and the proposed IFQ program.

(2) NMFS shall notify the public in the region of the subject fishery of the referendum eligibility criteria.

(3) Individuals who wish to vote as other fishery participants in a NEFMC IFQ referendum, based on criteria established by the NEFMC under (c)(2), must contact NMFS and produce all required documentation and certifications to receive a ballot. NMFS

shall provide sufficient time in the referendum process to allow for crew members to request, receive, and submit referendum ballots.

(g) *Referenda ballots.* (1) Ballots shall be composed such that voters will indicate approval or disapproval of the preferred IFQ program proposal.

(2) NMFS may require voters to self-certify on referenda ballots that they meet voter eligibility criteria. To be considered valid, ballots must be signed by the eligible voter.

(3) Referenda ballots shall be numbered serially or otherwise designed to guard against submission of duplicate ballots.

(4) If votes are weighted, the value of weighted votes shall be indicated on the ballot. The weighted vote must be cast as a single unit. Its value may not be split. The full value must be applied to the selection made on the ballot.

(5) NMFS shall allow at least 30 days for eligible voters to receive and return their ballots and shall specify a deadline by which ballots must be received. Ballots received after the deadline shall not be considered valid.

(h) *Determining the outcome of an IFQ referendum.* (1) NMFS shall tally and announce the results of the referendum within 90 days of the deadline by which completed ballots must be received. NMFS may declare a referendum invalid if the Agency can demonstrate the referendum was not conducted in accordance with the procedures established in the final rule implementing the referendum.

(2) A NEFMC IFQ program referendum shall be considered approved only if more than 2/3 of the votes submitted on valid ballots are in favor of the referendum question.

(3) A GMFMC IFQ program referendum shall be considered approved only if a majority of the votes submitted on valid ballots are in favor of the referendum question.

(i) *Council actions.* (1) If NMFS notifies a Council that an IFQ program proposal has been approved through a referendum, then the Council may submit the associated FMP or FMP amendment for Secretarial review and implementation.

(2) Any changes that would modify an IFQ program proposal that was reviewed by referenda voters may invalidate the results of the referendum and require the modified program proposal to be approved through a new referendum before it can be submitted to the Secretary for review and implementation.

(3) If NMFS notifies a Council that an IFQ referendum has failed, then the Council may modify its IFQ program

proposal and request a new referendum pursuant to paragraph (b) of this section. [FR Doc. E8-29650 Filed 12-12-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070430095-7095-01]

RIN 0648-XK59

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #7, #8, #9, #10, #11, and #12

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

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces six inseason actions in the ocean salmon fisheries. Inseason actions #7, #8, and #11 modified the commercial fishery in the area from U.S./Canada Border to Cape Falcon, Oregon. Inseason action #9 modified the recreational fishery in the area from Cape Falcon, Oregon to the Oregon/California Border. Inseason action #10 modified the recreational fishery in the area from Leadbetter Point, Washington to Cape Falcon, Oregon. Inseason Action #12 modified the recreational fishery in the area from the U.S./Canada Border to Leadbetter Point, Washington.

DATES: Inseason action #7 was effective on August 2, 2008. Inseason actions #8 and #11 were effective on August 16, 2008. Inseason action #9 was effective on August 14, 2008. Inseason action #10 was effective August 17, 2008. Inseason action #12 was effective August 26, 2008. These actions remained in effect until the closing date or attainment of the subarea quotas, whichever was first, as announced in the 2008 annual management measures or through additional inseason action. Comments will be accepted through December 30, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648-XK59, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: 206-526-6736, Attn: Peggy Busby

- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

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

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

FOR FURTHER INFORMATION CONTACT: Peggy Busby, by phone at 206-526-4323.

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

The Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife on July 30, August 12, August 13, August 15, and August 25, 2008. The information considered related to catch to date and Chinook and coho catch rates compared to quotas and other management measures established preseason.

Inseason action #7 increased the commercial landing and possession limit for Chinook, in the area from the U.S./Canada Border to Cape Falcon, Oregon, from 35 to 50 Chinook per vessel for each open period. This action was taken to provide greater access to Chinook salmon that were available for harvest within the guideline established preseason. On July 30, 2008, the states recommended this action and the RA concurred; inseason action #7 took effect on August 2, 2008. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

Inseason action #8 modified gear specific restrictions in the commercial fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon, by lifting the six-inch gear restriction; thereby providing greater access to harvestable Chinook salmon. On August 13, 2008, the states recommended this

action and the RA concurred; inseason action #8 took effect 1159 hours local time, August 14, 2008. Establishment or modification of gear restrictions is authorized by regulations at 50 CFR 660.409 (b)(1)(iv) .

Inseason action #9 closed the recreational fishery in the area from Cape Falcon, Oregon to the Oregon/California Border because the quota in the area was projected to be met and in order to operate the fishery within the 2008 regulations. On August 12, 2008, the states recommended this action and the RA concurred; inseason action #9 took effect 1159 hours local time, August 14, 2008. Automatic season closure based on quota is authorized by regulations at 50 CFR 660.409 (a)(1) .

Inseason action #10 included a transfer of 1000 coho from the commercial fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon to the recreational fishery from Leadbetter Point, Washington to Cape Falcon, Oregon; this action was taken to access harvestable coho and allowed the recreational fishery in the area to extend to Sunday, August 17, 2008. On August 15, 2008, the states recommended this action and the RA concurred. Inseason action #10 also closed the recreational fishery in the area from Leadbetter Point, Washington to Cape Falcon, Oregon effective 1400 hours local time, Sunday, August 17, 2008, because the quota in the area was projected to be met and in order to operate the fishery within the 2008 regulations. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i) .

Inseason action #11 included a transfer of 500 Chinook from the recreational fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon to the commercial fishery in the same area to provide greater opportunity for the commercial fishery to access Chinook salmon that were available for harvest. On August 15, 2008, the states recommended this action and the RA concurred; inseason action #11 took

effect August 16, 2008, Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i) .

Inseason action #12 closed the recreational fishery in the area from the U.S./Canada Border to Cape Alava, Washington and west of the Bonilla-Tatoosh Line (Neah Bay Subarea) because the quota for coho was projected to be met and in order to operate the fishery within the 2008 regulations. Inseason action #12 also increased the days open per week from five to seven days per week in the recreational fishery from Cape Alava to Queets River and Queets River to Leadbetter Point, Washington (La Push and Westport Subareas) to provide greater access to harvestable fish. On August 25, 2008, the states recommended this action and the RA concurred; inseason action #12 took effect 0001 hours local time, August 26, 2008. Automatic season closure based on quota is authorized by regulations at 50 CFR 660.409 (a)(1) . Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i) .

All other restrictions and regulations remain in effect as announced for the 2008 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to

other fisheries that may be operating in other areas.

Classification

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

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

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

Dated: December 9, 2008.

Emily H. Menashes,

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

[FR Doc. E8-29680 Filed 12-12-08; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 241

Monday, December 15, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1312; Directorate Identifier 2008-CE-065-AD]

RIN 2120-AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (HBC) Models 1900, 1900C, and 1900D airplanes. This proposed AD would require a one-time visual inspection and repetitive ultrasonic inspections of the left and right main landing gear (MLG) actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found. This proposed AD results from reports of leaking and cracked actuators. We are proposing this AD to detect and correct leaking and cracks in the MLG actuators, which could result in loss of hydraulic fluid. This condition could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

DATES: We must receive comments on this proposed AD by February 13, 2009.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** (202) 493-2251.

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

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

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; *telephone:* (800) 429-5372 or (316) 676-3140; *Internet:* <http://pubs.hawkerbeechcraft.com>.

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946-4120; *fax:* (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2008-1312; Directorate Identifier 2008-CE-065-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

We have received information that two HBC 1900 series airplanes' MLG actuators have been found with fatigue cracks in the end cap, which resulted in hydraulic fluid leakage. This condition,

along with an inoperative liquid level sensor, was found on another airplane that landed with all landing gear up. There have been a total of 6 reports of leaking actuators and 13 reports of cracked actuators.

This condition, if not corrected, could result in leaking and cracks in the MLG actuators, which may cause loss of hydraulic fluid. Loss of hydraulic fluid could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008.

The service information describes procedures for doing the following:

- One-time visual inspection and repetitive ultrasonic inspections of the MLG actuators;
- Replacement of the actuator if leaking and/or cracks are found; and
- Reporting the size and location of cracks to HBC if any are found during the inspections.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require a one-time visual inspection of the left and right main landing gear (MLG) actuators and repetitive ultrasonic inspections of the left and right MLG actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found.

Costs of Compliance

We estimate that this proposed AD would affect 300 airplanes in the U.S. registry.

The ultrasonic inspection includes the time allowed for removing and reinstalling the actuator. We estimate the following costs to do the proposed inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Visual Inspection: .5 work-hour × \$80 per hour = \$40	Not applicable	\$40	\$12,000

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Ultrasonic Inspection: 6 work hours × \$80 per hour = \$480 (If the mechanic does not remove the actuator for the ultrasonic inspection, the labor cost will be less.).	Not applicable	480	144,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
6 work hours × \$80 per hour = \$480 (If the mechanic removes the actuator for the ultrasonic inspection, then the labor cost will be less.).	\$4,600 per actuator	\$5,080

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hawker Beechcraft Corporation: Docket No. FAA-2008-1312; Directorate Identifier 2008-CE-065-AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by February 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category and equipped with a part number (P/N) 114-380041-11, 114-380041-13, or 114-380041-15 main landing gear (MLG) actuator:

Models	Serial Nos.
(1) 1900	UA-3.
(2) 1900C	UB-1 through UB-74, UC-1 through UC-174, and UD-1 through UD-6.
(3) 1900D	UE-1 through UE-439.

Unsafe Condition

(d) This AD results from reports of leaking and cracked actuators. We are issuing this AD to detect and correct leaking and cracks in the MLG actuators, which could result in loss of hydraulic fluid. This condition could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

Compliance

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

Actions	Compliance	Procedures
(1) Do a one-time visual inspection of the MLG actuator for cracks.	Within the next 50 hours time-in-service after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs later.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008.

Actions	Compliance	Procedures
(2) Do an ultrasonic inspection of the MLG actuator.	Initially within the next 600 cycles after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first. Repetitively thereafter inspect at intervals not to exceed every 1,200 cycles since the last ultrasonic inspection.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008.
(3) If cracks are found during any inspection required in paragraph (e)(1) or (e)(2) of this AD, replace the MLG actuator with one of the following: (i) MLG actuator P/N 114–380041–15 (or FAA-approved equivalent P/N) that is new or has been inspected following paragraphs (e)(1) and (e)(2) of this AD and has been found to not have cracks; or (ii) MLG actuator P/N 114–380041–17 (or FAA-approved equivalent P/N). Installation of MLG actuator P/N 114–380041–17 (or FAA-approved equivalent P/N) terminates the inspection requirements of paragraphs (e)(1) and (e)(2) of this AD.	Before further flight after the inspection where the cracks are found.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3870, dated April 2008.
(4) Do not install any MLG actuator P/N 114–380041–11 or 114–380041–13.	As of 3 months after the effective date of this AD.	Not applicable.

Note: The compliance times of cycles in this AD may be calculated as hours time-in-service (TIS) by multiplying the number of hours TIS on the MLG actuator by 4 to come up with the number of cycles. For the purposes of this AD:

1. 600 cycles equals 150 hours TIS; and
2. 1,200 cycles equals 300 hours TIS.

(f) If cracks are found during any inspection required in paragraphs (e)(1) or (e)(2) of this AD, report the size and location of the cracks to the type-certificate (TC) holder and send a copy of the report to the FAA.

(i) For the TC holder: Send report to Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085.

(ii) For the FAA: Send report to Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; e-mail: donald.ristow@faa.gov.

(iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita 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: Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; *Internet*: <http://pubs.hawkerbeechcraft.com>. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://www.regulations.gov>.

Issued in Kansas City, Missouri, on December 8, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–29591 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150670–07]

RIN 1545–BH49

Guidance Regarding the Treatment of Stock of a Controlled Corporation Under Section 355(a)(3)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal**

Register, the IRS is issuing temporary regulations giving guidance regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B) of the Internal Revenue Code. This action is necessary in light of amendments to section 355(b). The text of those regulations also serves as the text of these proposed regulations. These regulations will affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by March 16, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–150670–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–150670–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–150670–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Russell P. Subin, (202) 622–7790; concerning submission of comments and/or requests for a public hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 355(a)(3)(B) regarding the distribution of stock of a controlled corporation acquired in a transaction described in section 355(a)(3)(B). The temporary regulations revise § 1.355–2(g) to reflect issues arising under section 355(b)(3), as enacted by the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345), and modified by the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473, 2476). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that section 355(a)(3)(B) generally applies to parent-subsidiary groups of corporations, which tend to be larger businesses, and that these regulations primarily grant relief from the application of section 355(a)(3)(B) in certain situations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. As described in the preamble to the temporary regulations, comments are also requested regarding the overall approach taken in these proposed rules, including the extent to which the definition of a taxable

transaction should be the same under section 355(a)(3)(B) and section 355(b), and whether the exception for acquisitions from affiliates should be the same under those sections. Comments are also requested regarding the need for future guidance described in sections 4.A. and 4.B. of such preamble, relating to predecessors of distributing corporations, acquisitions involving corporations that join the distributing corporation's separate affiliated group, predecessors of controlled corporations, acquisitions involving corporations that join the controlled corporation's separate affiliated group, the application of *Dunn Trust v. Commissioner*, 86 T.C. 745 (1986), and the treatment of stock issuances by the controlled corporation to the distributing corporation. Comments are also requested regarding the potential application of the hot stock rule to redemptions of controlled corporation stock described in section 4.C. of such preamble. With respect to redemptions, comments are specifically requested regarding the circumstances under which section 355(a)(3)(B) should apply.

All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.
Section 1.355–2(g) also issued under 26 U.S.C. 355(b)(3)(D). * * *.

Par. 2. Section 1.355–2 is amended by revising paragraph (g) and adding paragraph (i) to read as follows:

§ 1.355–2 Limitations.

* * * * *

(g) [The text of the proposed amendments to § 1.355–2(g) is the same as the text of § 1.355–2T(g) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(i) [The text of the proposed amendments to § 1.355–2(i) is the same as the text of § 1.355–2T(i) published elsewhere in this issue of the **Federal Register**.]

Steve T. Miller,

(Acting) Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–29545 Filed 12–12–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0867]

RIN 1625–AA00

Safety Zone; Desert Storm Exhibition Run; Lake Havasu, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone within the Thompson Bay region of the navigable waters of the Colorado River in Lake Havasu, Lake Havasu City, Arizona in support of the Desert Storm Exhibition Run. This temporary safety zone is would provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before January 14, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0867 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery*: 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.

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

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278-7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0867), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-0867" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We

will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-0867 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1028 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Lake Racer LLC is sponsoring the Desert Storm Exhibition Run. The event is an Exhibition Run consisting of up to 250 powerboats ranging from 21 to 55 feet in length. The sponsor will provide 2 water rescue boats and 20 perimeter boats for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone that will be enforced from 8 a.m. to 5:30 p.m. on April 24, 2009 thru April 26, 2009. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the regatta and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The limits of this temporary safety zone are enclosed by the following coordinates 34°27.81N, 114°20.90W; 34°26.24N, 114°19.28W; 34°26.49N, 114°18.99W. The Coast Guard may be assisted by the other federal, state, or local agencies, including the Coast Guard Auxiliary. Vessel or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the size and location of the safety zone within the water. Commercial vessels will not be hindered by the safety zone, as they will be able to transit safely around the zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic

impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators vessels intending to transit a portion of the Colorado River from 8 a.m. to 5:30 p.m. on April 24, 2009 through April 26, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can pass safely around the zone. Before the enforcement period, the Coast Guard will submit an inclusion into the Local Notice to Mariners (LNM) that will be available to the users of the river. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11–121 to read as follows: § 165.T11–121 Safety Zone; Desert Storm Exhibition Run; Lake Havasu City, Lake Havasu, AZ.

(a) *Location.* All waters of Thompson Bay on the Colorado River and land adjacent to those waters enclosed by the following coordinates 34°27.81N, 114°20.90W; 34°26.24N, 114°19.28W; 34°26.49N, 114°18.99W.

(b) *Enforcement Period.* This safety zone will be enforced from 8 a.m. to 5:45 p.m. on April 25, 2009 and April 26, 2009. If the need for the safety zone ends before the scheduled termination times, the captain of the port will cease enforcement of this safety zone.

(c) *Definitions.* (1) *Designated representative.* Any Commissioned, Warrant, or Petty Officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port San Diego.

(2) *Coast Guard Patrol Commander.* A Commissioned, Warrant, or Petty Officer who will be designated by the Captain of the Port San Diego.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port, or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated representative.

(4) Upon being hailed by the Coast Guard Patrol personnel, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: November 21, 2008.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. E8–29579 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 77, and 78

[EPA–HQ–OAR–2008–0774; FRL–8750–7

RIN 2060–AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of the program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO₂) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air Interstate Rule (CAIR) and the final Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is proposing to reaffirm—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions in order to remove any uncertainty about their regulatory status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of

the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

DATES: Written comments must be received by January 29, 2009. Any request for a public hearing must be made by telephone or by e-mail to the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by December 22, 2008. If such a telephone or e-mail request for a public hearing is received by that date, a public hearing will be held on December 30, 2008 in Washington, DC. For additional information on a public hearing and comments, see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

ADDRESSES: Submit any comments, identified by Docket ID EPA–HQ–OAR–2008–0774 (which incorporates by reference the dockets for CAIR and the CAIR FIPs, i.e., Docket ID Nos. EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2004–0076), by mail to Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Any comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at alpern.dwight@epa.gov. Electronic copies of this document can be accessed through the EPA Web site at: <http://epa.gov/airmarkets>.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be

regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether

your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Administrative Procedures Used in This Action. This notice proposes to reaffirm the promulgation of certain revisions, of the Acid Rain Program rules, that were previously promulgated and have been in effect since mid-2006 and to withdraw the interim final rule reaffirming the promulgation of these same revisions. EPA is publishing at the same time a direct final rule, reaffirming the promulgation of these revisions of the Acid Rain Program rules and withdrawing the interim final rule reaffirming the promulgation of these same revisions, in the “Rules and Regulations” section of this **Federal Register** because the Agency views this as a noncontroversial action and anticipates no adverse comment. EPA is also publishing at the same time the interim final rule (referenced above), reaffirming the promulgation of these revisions, in the “Rules and Regulations” section of this **Federal Register**. The effectiveness of the interim final rule is immediate upon the date of promulgation in the **Federal Register** and continues for 12 months from that date, unless the interim final rule is withdrawn on an earlier date by the direct final rule or, if the direct final rule itself is withdrawn, the final rule, addressing these rule revisions.

EPA has explained its reasons for this action in the preamble of the direct final rule and, in more detail, in the preamble of the interim final rule.

If EPA receives no adverse comment during the comment period, the Agency will not take further action on this proposed rule. If EPA receives any adverse comment during the comment period, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the direct final rule is being withdrawn and will not take effect and that the interim final rule is not being withdrawn. EPA will address timely comments on the direct final rule in any subsequent final rule based on this proposed rule.

EPA does not intend to institute a second comment period on this action. Any parties interested in commenting must do so during the comment period established in this notice.

Considerations in Preparing Comments for EPA. For information on

submitting Confidential Business Information and tips on preparing your comments, see the **SUPPLEMENTARY INFORMATION** section of the direct final rule located in the rules section of this **Federal Register**.

Public Hearing. If requested, EPA will hold a public hearing on this proposed rule. EPA will hold a hearing only if the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble receives by telephone or e-mail by December 22, 2008 a request for a public hearing in order to present oral testimony on this proposed rule. If a public hearing is held on this proposed rule, the hearing will be held on December 30, 2008. Any person who plans to attend the public hearing should visit the EPA’s Web site at <http://epa.gov/airmarkets> or contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble to learn if a hearing will be held and, if so, what will be the location and time for the hearing. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

The public hearing, if held, will be limited to comments on this proposed rule. Each commenter’s oral testimony will be limited to 5 minutes. EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD-ROM) or in paper copy. The public hearing schedule, including the list of speakers, will be posted on EPA’s Web site at <http://epa.gov/airmarkets>. Verbatim transcripts and written statements will be included in the rulemaking docket.

The public hearing, if held, will provide interested parties the opportunity to present data, views, or arguments concerning this proposed rule. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Any oral comments and supporting information presented at the public hearing will be given the same weight as any other written statements and supporting information submitted during the comment period.

Outline. The following outline is provided to aid in locating information in this preamble.

- I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
- II. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act

- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

The Acid Rain Program rule revisions whose promulgation EPA proposes to reaffirm in this notice are described in the preamble of the direct final rule, and in more detail in the preamble of the interim final rule, published in the **Federal Register** simultaneously with this notice. The reasons why the rule revisions are appropriate for the Acid Rain Program, why EPA maintains that it should remove any uncertainty about the legal status of the rule revisions, and therefore why EPA is issuing this proposed rule are also set forth in the preambles of the direct final rule and the interim final rule. As discussed above, EPA also proposes to withdraw the interim final rule as of effective date of any final rule issued as a result of this proposed rule.

II. 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 is therefore not subject to review under the Executive Order. In this action, EPA is simply proposing to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and are currently in effect and have been since mid-2006.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden. Moreover, EPA maintains that the effect of these revisions when they were first

promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, e.g., by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial

number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule does not change the existing Acid Rain Program rules and thus the economic impact of those rules on small entities. The rule simply proposes to reaffirm the promulgation of existing Acid Rain Program rule revisions that have been in effect since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the economic impact of the then-existing rules on all regulated sources and thus on small entities that might be, or own, regulated sources. For example, by requiring compliance on a source, rather than a unit, basis, the revisions reduced the potential for excess emissions penalties due to an inadvertent error, e.g., in the owner's distribution of allowances among the units at a source that would cause one unit to have more than enough allowances to cover emissions and another unit to not have enough allowances to cover emission. As a further example, the revisions removed some requirements (e.g., the required submission of an annual compliance certification report) and thereby removed some costs of compliance for all regulated sources.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective,

or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (Aug. 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This 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. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that

were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. 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 (Nov. 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885 (Apr. 23, 1997)), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on 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 rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled "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 and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 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 rule simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their

mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply proposes to reaffirm the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 5, 2008.

Stephen L. Johnson,
Administrator.

[FR Doc. E8-29386 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA-R07-RCRA-2008-0849; FRL-8751-9]

Adequacy of Iowa Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a modification to Iowa's approved municipal solid waste landfill (MSWLF) program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law. The Region is also proposing to approve updates to Iowa's approved MSWLF program for adding financial assurance mechanisms for local governments, adding the financial test and corporate guarantee to financial assurance mechanisms, adding a technical amendment to solid waste location restrictions for airport safety,

and adopting language from the Federal MSWLF criteria at 40 CFR part 258.

DATES: Comments on this proposed action must be received in writing by January 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2008-0849, by one of the following methods:

1. *www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*:
mclaughlin.chilton@epa.gov.

3. *Mail or Hand Delivery or Courier*: Chilton McLaughlin, Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2008-0849. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard

copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Chilton McLaughlin at (913) 551-7666, or by e-mail at *mclaughlin.chilton@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through State-issued RD&D permits. RD&D permits are only available in States with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Also, EPA issued a final rule on November 27, 1996, for financial assurance mechanisms for local governments (61 FR 60328 at 60337); a final rule on April 10, 1998, adding the financial test and corporate guarantee to financial assurance mechanisms (63 FR 17706 at 17729); and a final rule on October 15, 2003, providing a technical amendment to solid waste location restrictions for airport safety (68 FR 59335). The Federal MSWLF criteria are codified at 40 CFR part 258. Approval procedures for provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Iowa's MSWLF permit program was approved on August 19, 1997 (62 FR 44127). On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program.

B. Decision

After a thorough review, EPA is proposing that Iowa's RD&D permit provisions and its updated rules for its MSWLF program, as defined under Iowa

Administrative Code (IAC) 567, Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes," effective December 10, 2007, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

C. Statutory and Executive Order Reviews

This action proposes to approve state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork Reduction Act;

3. Regulatory Flexibility Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. Unfunded Mandates Reform Act—Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. Executive Order 13132: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (i.e., there are no substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities between Federal and State governments);

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (i.e., there are no substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes);

7. Executive Order 13045: Protection of Children from Environmental Health

and Safety Risks—This proposed action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. National Technology Transfer Advancement Act—This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. 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. EPA approves state programs so long as the State programs meet the criteria delineated in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 40 CFR part 258 requirements. Thus, the National Technology Transfer and Advancement Act does not apply to this action;

10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: December 3, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8-29642 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648-AX36

Notification of Receipt of a Petition for Rulemaking to Implement the Provisions of the Marine Mammal Protection Act for Swordfish Imports

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

ACTION: Receipt of petition for rulemaking; request for information and comments.

SUMMARY: NMFS announces receipt of a petition for rulemaking under the Administrative Procedure Act. Center for Biological Diversity and Turtle Island Restoration Network, non-governmental organizations, have petitioned the U.S. Department of Commerce and other relevant Departments to initiate rulemaking to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of marine mammals in excess of United States standards.

DATES: Comments must be received by January 29, 2009.

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

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.
- Mail: Director, Office of International Affairs, Attn: Swordfish Petition, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910
- Fax: (301) 713-2313

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

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

The complete text of Center for Biological Diversity and Turtle Island Restoration Network's petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Lekelia Jenkins at 301-713-9090 x131.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that "The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce] (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States."

Some information pertinent to the effects of commercial fishing technology on marine mammals can be found in a report entitled "Worldwide Bycatch of Cetaceans: An evaluation of the most significant threats to cetaceans, the affected species and the geographic areas of high risk, and the recommended actions from various independent institutions." This report, published by NMFS Office of International Affairs and prepared by outside experts, was commissioned by NMFS to identify threats to cetaceans, ongoing efforts to address these threats, and prioritize areas where the agency could focus future initiatives to improve international cetacean conservation. The complete text of this report is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/docs/OPR36.pdf>.

Information in the Petition

NMFS received the petition on March 5, 2008. The petition asserts that the Secretaries of Commerce and other relevant federal Departments are required to obtain reasonable proof from countries exporting swordfish and swordfish products to the U.S. regarding the effects of their commercial swordfish fishing technology on marine

mammals. The petition requests that the Secretary of the Treasury ban imports of swordfish from any and all countries that have not satisfied the MMPA section 101(a)(2) requirement. As support for the need for this action, the petition alleges potential deficiencies in the fishing, exporting, and other related practices of some nations that export swordfish to the United States without articulating any specific “U.S.

standards” that have been exceeded by other nations.

The petition fails to define “United States standards;” rather, it describes marine mammal protection programs that the United States has implemented. NMFS will consider public comments received in determining whether to proceed with the request by Center for Biological Diversity and Turtle Island Restoration Network. In addition to general comments on the petition,

NMFS specifically requests comments on how to define “United States standards” as referenced in MMPA section 101(a)(2).

Dated: December 10, 2008.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. E8–29653 Filed 12–12–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 241

Monday, December 15, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Community Outreach and Assistance Partnership Program

Funding Opportunity Title: Community Outreach and Assistance Partnership Program.

Announcement Type: Request for Applications (RFA) Community Outreach and Assistance

Partnership Program: Initial Announcement.

CFDA Number: 10.455.

DATES: Applications are due by 5 p.m. EST on February 13, 2009. Applications received after the deadline will not be considered for funding. All awards will be made and partnership agreements completed by September 30, 2009.

Overview: In accordance with section 1522(d) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces the availability of approximately \$3.4 million in fiscal year 2009 (subject to availability of funds) for collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers, who produce Priority Commodities as defined in Part I.C. Awards under this program will be made on a competitive basis for projects of up to one year. Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to the substantial involvement of RMA in the project. This announcement lists the information needed to submit an application under this program.

FOR FURTHER INFORMATION CONTACT: David Wiggins, National Outreach Program Manager, Telephone (202) 690-2686, Facsimile (202) 690-1518, E-mail: david.wiggins@rma.usda.gov. Application materials can be downloaded from the RMA Web site at

<http://www.rma.usda.gov/aboutrma/agreements/>; or from the Government grants Web site at <http://www.grants.gov>. Click on "Find Grant Opportunities," then select "Basic Search," type in "RMA" in the Keyword Search field and select "Search," select "Community Outreach and Assistance Partnership Program" under the Opportunity Title column to access the application package for this announcement.

The collection of this information has been approved under OMB control number 0563-0066 through November 30, 2010.

This announcement consists of seven parts.

Part I—General Information

- A. Legislative Authority and Background
- B. Purpose
- C. Definition of Priority Commodities
- D. Program Description

Part II—Award Information

- A. Available Funding
- B. Types of Applications

Part III—Eligibility Information

- A. Eligible Applicants
- B. Project Period
- C. Non-Financial Benefits
- D. Cost Sharing or Matching
- E. Funding Restrictions

Part IV—Application and Submission Information

- A. Address To Submit an Application Package
- B. Content and Form of Application

Part V—Application Review Process

- A. General
- B. Evaluation Criteria and Weights

Part VI—Award Administration

- A. Notification of Award
- B. Access to Panel Review Information
- C. Confidential Aspects of Proposals and Awards
- D. Reporting Requirements
- E. Administration
- F. Prohibitions and Requirements With Regard to Lobbying
- G. Applicable OMB Circulars
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Part VII—Additional Information

- A. Requirement To Use Program Logo
- B. Requirement To Provide Project Information to an RMA Representative
- C. Private Crop Insurance Organizations and Potential Conflict of Interest
- D. Dun and Bradstreet (D&B Data Universal Numbering System)
- E. Required Registration for Grants.gov

Part I—General Information

A. Legislative Authority and Background

This program is authorized under section 1522(d)(3)(F) of the Act which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. One of RMA's four strategic goals is to ensure that its customers and potential customers are well informed of the risk management solutions available. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, providing risk management education and information and offering outreach programs aimed at equal access and participation of underserved communities.

B. Purpose

The purpose of this program is to fund projects that provide limited resource, socially disadvantaged, and other traditionally underserved producers with training, informational opportunities and assistance necessary to understand:

- (1) The kind of risks addressed by existing and emerging risk management tools;
- (2) The features and appropriate use of existing and emerging risk management tools; and
- (3) How to make sound risk management decisions.

Each partnership agreement awarded through this program will provide the applicant with funds, guidance, and the substantial involvement of RMA to deliver outreach and assistance programs to producers in a specific geographical area.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

- *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or

fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

- *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

- *Underserved commodities.* This group includes: (a) Commodities, including livestock, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage produced by limited resource, socially disadvantaged, and other traditionally underserved producers.

A project is considered as giving priority to Priority Commodities if the majority of the educational outreach and assistance activities are directed to limited resource, socially disadvantaged and other traditionally under-served producers of one or more of the three classes of commodities listed above or any combination of the three classes.

D. Program Description

This program will support a wide range of innovative outreach and assistance activities in farm management, financial management, marketing contracts, crop insurance and other existing and emerging risk management tools, RMA will be substantially involved in the activities listed under paragraph 2. The applicant must identify specific ways in which RMA could have substantial involvement in the proposed outreach activity.

In addition to the specific, required activities listed under paragraph 1, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific time lines for performing the tasks, and specific responsibilities of the partners.

1. In conducting activities to achieve the purpose and goal of this program, award recipients will be required to perform the following activities:

- Develop and finalize a risk management outreach delivery plan that will contain the tasks needed to accomplish the purpose of this program, including a description of the manner in which various tasks for the project will

be completed, the dates by which each task will be completed, and the partners that will have responsibility for each task. Task milestones must be listed to ensure that progress can be measured at various stages throughout the life of the project. The plan must also provide for the substantial involvement of RMA in the project.

Note: All partnership agreements resulting from this announcement will include delivery plans in a table format. All applicants are strongly encouraged to refer to the table in the application package, when preparing a delivery plan and to use this format as part of the project description.

- Assemble risk management instructional materials appropriate for producers of Priority Commodities to be used in delivering education and information. This will include: (a) Gathering existing instructional materials that meet the local needs of producers of Priority Commodities; (b) identifying gaps in existing instructional materials; and (c) developing new materials or modifying existing instructional materials to fill existing gaps.

- Develop and conduct a promotional program and dissemination activities to publicize the project accomplishments. This program will include activities using the media, newsletters, publications, or other informational dissemination techniques that are designed to: (a) Raise awareness for risk management; (b) inform producers of the availability of risk management tools; (c) inform producers of the training and informational opportunities being offered; and (d) communicate the project's accomplishments (products, results and impacts, etc.) to the broadest audiences. Minority media and publications should also be used to achieve the broadest promotion of outreach opportunities for limited resource and socially disadvantaged farmers and ranchers possible.

- Deliver risk management training and informational opportunities to limited resource and socially disadvantaged agricultural producers and agribusiness professionals of Priority Commodities. This will include organizing and delivering educational activities using the instructional materials identified earlier. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise farmers on risk management.

- Document all outreach activities conducted under the partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success

of the program. The recipient will also be required to provide information to an RMA-selected contractor to evaluate all outreach activities and advise RMA as to the effectiveness of activities.

2. RMA will be responsible for the following activities:

- Review and approve in advance the recipient's project delivery plan.

- Collaborate with the recipient in assembling risk management materials for producers. This will include: (a) Reviewing and approving in advance all educational materials for technical accuracy; (b) serving on curriculum development workgroups; (c) providing curriculum developers with fact sheets and other risk management publications prepared by RMA; (d) advising the applicant on the materials available over the Internet through the AgRisk Education Library; (e) advising the applicant on technical issues related to crop insurance instructional materials; and (f) advising the applicant on the use of the standardized design and layout formats to be used on program materials.

- Collaborate with the recipient on a promotional program for raising awareness of risk management and for informing producers of training and informational opportunities. This will include: (a) Reviewing and approving in advance all promotional plans, materials, and programs; (b) serving on workgroups that plan promotional programs; (c) advising the applicant on technical issues relating to the presentation of crop insurance products in promotional materials; and (d) participating, as appropriate, in media programs designed to raise general awareness or provide farmers with risk management education.

- Collaborate with the recipient on outreach activities to agricultural producers and agribusiness leaders. This will include: (a) Reviewing and approving in advance all producer and agribusiness educational delivery plans; (b) advising the applicant on technical issues related to the delivery of crop insurance education and information; and (c) assisting the applicant in informing crop insurance professionals about educational plans and scheduled meetings.

- Reviewing and approving recipient's documentation of risk management education and outreach activities.

Part II—Award Information

A. Available Funding

The amount of funds available in FY 2009 for support of this program is approximately \$3.4 million dollars

(subject to availability of funds). There is no commitment by USDA/RMA to fund any particular project or to make a specific number of awards. No maximum or minimum funding levels have been established for individual projects or geographic locations. Applicants awarded a partnership agreement for an amount that is less than the amount requested may be required to modify their application to conform to the reduced amount before execution of the partnership agreement. It is expected that awards will be made approximately 120 days after the application deadline.

B. Types of Applications

Applicants must specify whether the application is a new, renewal, or resubmitted application.

1. *New Application*—This is an application that has not been previously submitted to the RMA Outreach Program. All new applications will be reviewed competitively using the selection process and evaluation criteria described in this RFA.

2. *Renewal Application*—This is an application that requests additional funding for a project beyond the period that was approved in an original or amended award. Applications for renewed funding must contain the same information as required for new applications, and additionally must contain a Progress Report. Renewal applications must be received by the relevant due dates, will be evaluated in competition with other pending applications, and will be reviewed according to the same evaluation criteria as new applications.

3. *Resubmitted Application*—This is an application previously submitted to the RMA Outreach office, but was not funded. Resubmitted applications must be received by the relevant due dates, and will be evaluated in competition with other pending applications and will be reviewed according to the same evaluation criteria as new applications.

Part III—Eligibility Information

A. Eligible Applicants

Educational institutions, community based organizations, associations of farmers and ranchers, state departments of agriculture, and other non-profit organizations with demonstrated capabilities in developing and implementing risk management and other marketing options for priority commodities are eligible to apply. Individuals are not eligible applicants. Applicants are encouraged to form partnerships with other entities that complement, enhance, and/or increase

the effectiveness and efficiency of the proposed project. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards). Applications from ineligible or excluded persons will be rejected in their entirety.

B. Project Period

Each project will be funded for a period of up to one year from the project starting date for the activities described in this announcement.

C. Non-Financial Benefits

To be eligible, applicants must also demonstrate that they will receive a non-financial benefit as a result of a partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

D. Cost Sharing or Matching

Cost sharing, matching, in-kind contribution, or cost participation is not required.

E. Funding Restrictions

Indirect costs for projects submitted in response to this solicitation are limited to 10 percent of the total direct costs of the agreement. Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;
7. Fund any activities prohibited in 7 CFR parts 3015 and 3019, as applicable.

Part IV—Application and Submission Information

A. Address To Submit an Application Package

The address for submissions is USDA/RMA, Community Outreach, and Assistance Partnership Program, c/o William Buchanan, 1400 Independence Avenue, SW., Room 6709, Stop 0801, Washington, DC 20250-0801. All applications must be submitted by the deadline. Late or incomplete applications will not be considered and will be returned to the applicant. Applications will be considered as meeting the announced deadline if they are received in the mailroom at the address on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants using the U.S. Postal Service should allow for the extra time for delivery due to the additional security measures that mail delivered to government offices in the Washington DC area now requires. Failure of the selected delivery services will not extend the deadline. Applicants are strongly encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt.

Applicants that wish to submit applications electronically, should use the Government Grants Web site at <http://www.grants.gov>.

B. Content and Form of Application

1. *General*—Use the following guidelines to prepare an application. Each application must contain the following elements in the order indicated. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion.

(a) Prepare the application on only one side of the page using standard size (8½" x 11") white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and two copies of the completed and signed application (3 total) and one electronic copy (Microsoft Word format preferred) on compact disc

or diskette must be submitted in one package. Only hard copies of OMB Standard Forms should be submitted. Do not include the standard forms on the diskette.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

1. *Application for Federal Assistance, OMB Standard Form 424*—Please complete this form in its entirety. The original copy of the application must contain a pen-and-ink signature of the authorized organizational representative (AOR), individual with the authority to commit the organization's time and other relevant resources to the project. The Catalog of Federal Domestic Assistance Number (block 10) is "10-455—Community Outreach and Assistance."

2. *Table of Contents*—Each application must contain a detailed Table of Contents immediately following OMB SF 424.

3. *Project Summary*—(Limited to one page, placed after the Table of Contents) The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goals; and relevance of the project to the goals of the community outreach and assistance program.

4. *Progress Report*—(Limited to three pages, placed immediately after the Project Summary) Renewal applications of an existing project supported under the same program should include a clearly identified summary progress report describing the results to date. The progress report should contain a comparison of actual accomplishments with the goals established for the project.

5. *A Project Description*—(Limited to twenty-five single-sided pages) that describes the outreach project in detail, including the program delivery plan and a Statement of Work. The description should provide reviewers with sufficient information to effectively evaluate the merits of the application under the criteria contained in Part V. The description should include the circumstances giving rise to the proposed activity; a clear, concise statement of the objectives; the steps necessary to implement the program to attain the objectives; an evaluation plan for the activities; a program delivery plan, and statement of work that describes how the activities will be implemented and managed by the applicant.

The statement of work in table format should identify each objective and the key tasks to achieve the objective, the entity responsible for the task, the completion date, the task location, and RMA's role. Applicants are strongly encouraged to refer to the sample table in the application package, when preparing a delivery plan and to use this table format in that portion of the application narrative that addresses the delivery plan.

6. *Budget, OMB Standard Form 424-A, "Budget Information, Non-Construction Program"*—Indirect costs allowed for projects submitted under this announcement will be limited to 10 percent of the total direct cost of the partnership or cooperative agreement. Applicants should include reasonable travel costs associated with attending at least two RMA designated two-day events, which will include a Project Directors' meeting and civil rights training.

7. *Budget Narrative*—A detailed narrative in support of the budget should show all funding sources and itemized costs for each line item contained on the SF-424A. All budget categories must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the SF-424A. There must be a detailed breakdown of all costs, including indirect costs. Include budget notes on each budget line item detailing how each line item was derived. Also provide a brief narrative description of any costs that may require explanation (*i.e.*, why a specific cost may be higher than market costs). Only items or services that are necessary for the successful completion of the project will be funded as permitted under the Act, the applicable Federal Cost principles, and are not prohibited under any other Federal statute. Salaries of project personnel should be requested in proportion to the effort that they would devote to the project.

8. *Key Personnel*—The roles and responsibilities of each PD and/or collaborator should be clearly described; and the vitae of the PD and each co-PD, senior associate and other professional personnel.

9. *Collaborative Arrangements (Including Letters of Support)*—If it will be necessary to enter into formal consulting or collaborative arrangements, such arrangements should be fully explained and justified. If the consultants or collaborators are known at the time of application, a vitae or resume should be provided. Evidence (*e.g.*, letter of support) should be included if the collaborators involved

have agreed to render these services. Additional information on consultants and collaborators are required in the budget portion of the application.

10. *Current and Pending Support*—All applications must list all current public or private support to which personnel identified in the application have committed portions of their time, whether or not salary support for persons involved is included in the budget. An application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. The projects proposed for funding should be included in the pending section.

11. *Disclosure of Lobbying Activities, OMB Standard Form LLL*—All applications must contain a signed copy of this form (See Part VI (F)). Applicants who are not engaging in lobbying activities should write "Not Applicable" and sign the form.

12. *A completed and Signed "Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions), AD 1047."*

13. *A completed and Signed "Certifications Regarding Drug-Free Workplace, AD-1049."*

14. *Appendices* are allowed if they are directly germane to the proposed project.

C. Acknowledgment of Applications

Applications submitted by facsimile or through other electronic media (except grants.gov), regardless of the date or time of submission or the time of receipt, will not be considered and will be returned to the applicant. Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged in writing. There will be no notification of incomplete, unqualified, or unfunded applications until the awards have been made. RMA will assign an identification number to the application when received. This number will be provided to applicants when the receipt of application is acknowledged. Applicants should reference the assigned identification number in all correspondence regarding the application.

If receipt of application is not acknowledged by RMA within 15 days of the submission deadline, the applicant should contact David Wiggins

at (202) 690–2686 or electronically at david.wiggins@rma.usda.gov.

Part V—Application Review Process

A. General

Each application will be evaluated using a two-part process. First, each application will be screened by RMA personnel to ensure that past performances were satisfactorily met and that it meets the requirements in this announcement. Applications that do not meet the requirements of this announcement or are incomplete will not receive further consideration.

Second, a review panel will consider the merits of all applications that meet the requirements in the announcement. A panel of not less than three independent reviewers will evaluate each application. Reviewers will be drawn from USDA, other Federal agencies, and others representing public and private organizations, as needed. The project description and any appendices submitted by applicant will be used by the review panel to evaluate the merits of the project being proposed for funding. The panel will examine and score applications based on each of the four criteria contained in paragraph B of this part “Evaluation Criteria and Weights”.

The panel will be looking for the specific elements listed with each criterion when evaluating the applications and scoring them. For each application, panel members will assign a point value up to the maximum for each criterion. After all reviewers have evaluated and scored each of the applications, the scores for the entire panel will be averaged to determine an application’s final score.

After assigning points for each criterion, applications will be listed in initial rank order and presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement. Applications will then be funded in final rank order until all available funds have been expended. Applicants must score 50 points or more to be considered for funding. If there are unused remaining funds, RMA may conduct another round of competition through the announcement of another RFA.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the programs described in this announcement. However, if the Manager of FCIC determines that an application recommended for funding under this announcement is sufficiently similar to

a project that has been funded or has been recommended to be funded under another FCIC or RMA education or outreach program, then the Manager may elect to not fund that application in whole or in part.

B. Evaluation Criteria and Weights

1. Project Benefits—Maximum 40 Points

The applicant must demonstrate that the project benefits to limited resource, socially disadvantaged and other traditionally underserved producers warrant the funding requested. Applicants will be scored according to the extent they can: (a) Reasonably estimate the number of producers reached through the project; (b) justify the estimates with clear specifics related to the delivery plan; (c) identify the actions producers will likely be able to take as a result of the project; and (d) identify specific measures for evaluating the success of the project. Reviewers’ scoring will be based on the scope and reasonableness of the applicants’ estimate of the number of producers reached through the project, clear descriptions of specific expected project benefits for producers, and well-constructed plans for measuring the project’s effectiveness.

2. Project Management—Maximum 20 Points

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores will be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs using the appropriate language service that assist limited resource, socially disadvantaged and other traditionally underserved producers. If the applicant has been a recipient of other Federal or other government grants, cooperative agreements, or contracts, the applicant must also detail that they have consistently complied with financial and program reporting and auditing requirements. Applicants that will employ, or have access to personnel who have experience in directing agricultural programs or providing education programs that benefit producers will receive higher rankings. Higher scores will be awarded to applicants with no more than two on-going projects funded by RMA under this program in previous years.

3. Collaborative Partnering—Maximum 20 Points

The applicant must demonstrate experience and capacity to partner with and gain the support of other agencies,

grower organizations, agribusiness professionals, and agricultural leaders to enhance the quality and effectiveness of the program. Applicants will receive higher scores to the extent that they can document and demonstrate: (a) That partnership documented commitments are in place for the express purpose of delivering the program in this announcement; (b) that the project will incorporate training on the benefits and implementation of the Adjusted Gross Revenue Lite (AGR-LITE) insurance coverage plan and other risk management tools; (c) that the project promotes energy alternatives for small farmers and ranchers; (d) that a broad and diverse group of farmers and ranchers will be reached; and (e) that a substantial effort has been made to partner with organizations that can meet the needs of producers that are small, have limited resources, are minorities, or are beginning farmers and ranchers.

4. Delivery Plan—Maximum 20 Points

The applicant must demonstrate that its program delivery plan is clear and specific. For each of the applicant’s responsibilities contained in the description of the program, the applicant must demonstrate that it can identify specific tasks and provide reasonable time lines that further the purpose of this program. Applicants will obtain a higher score to the extent that the tasks of the project are specific, measurable, and reasonable, have specific periods for completion, relate directly to the required activities, the program objectives described in this announcement, and use the appropriate language service.

5. Diversity

Management reserves the right to award additional points to applications that promote diversity.

Part VI—Award Administration

A. Notification of Award

Following approval by the RMA awarding official, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the awarding official of RMA shall enter into partnership agreements with applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The agreements provide the amount of Federal funds for use in the project period, the terms and conditions of the award and the time period for the project.

The effective date of the agreement is the date the agreement is executed by

both parties. RMA will extend to award recipients, in writing, the authority to draw down funds for conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Applicants that are not funded will be notified within 120 days after the submission deadline.

B. Access to Panel Review Information

Upon written request from the applicant, your score from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

C. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of proposals not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

D. Reporting Requirements

Applicants awarded partnership agreements will be required to submit quarterly progress and financial reports (OMB Standard Form 269) throughout the project period, as well as a final program and financial report no later than 90 days after the end of the project period.

E. Administration

All partnership agreements are subject to the requirements of 7 CFR part 3015.

F. Prohibitions and Requirements With Regard to Lobbying

All partnership agreements are subject to the requirements of 7 CFR part 3018. A copy of the certification and disclosure forms must be submitted with the application.

G. Applicable OMB Circulars

All partnership and cooperative agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

H. Confidentiality

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

I. Civil Rights Training

All recipients of federally assisted programs are required to comply with Federal civil rights laws and regulations. USDA/RMA policies and procedures require recipients of federally assisted programs to attend mandatory civil rights training sponsored by RMA, to become fully aware of civil rights requirements and responsibilities. Applicants should include in their budgets reasonable travel costs associated with attending at least two two-day RMA designated events that include a Project Directors meeting and required civil rights training.

Part VII—Additional Information

A. Requirement To Use Program Logo

Applicants awarded partnership agreements will be required to use a program logo and design provided by RMA for all instructional and promotional materials.

B. Requirement To Provide Project Information to an RMA Representative

Applicants awarded partnership agreements will be required to assist RMA in evaluating the effectiveness of its outreach program by providing documentation of outreach activities and related information to any contractor selected by RMA for program

evaluation purposes. This requirement also includes providing demographic data on program participants.

C. Private Crop Insurance Organizations and Potential Conflict of Interest

Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this announcement. However, such entities will not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Such entities will also not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one company's services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

D. Dun and Bradstreet (D&B) Data Universal Numbering System

A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of businesses worldwide. A **Federal Register** notice of final policy issuance (68 FR 38402) requires a DUNS number in every application (*i.e.*, hard copy and electronic) for a grant or cooperative agreement. Therefore, potential applicants should verify that they have a DUNS number or take steps needed to obtain one. For information about how to obtain a DUNS number, go to <http://www.grants.gov>. Please note that the registration may take up to 14 business days to complete.

E. Required Registration for Grants.gov

The Central Contract Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications via [grants.gov](http://www.grants.gov) (a DUNS number is needed for CCR registration). For information about how to register in the CCR, visit <http://www.grants.gov>. Allow a minimum of 5 days to complete the CCR registration.

Signed in Washington, DC on December 8, 2008.

James Callan,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E8-29549 Filed 12-12-08; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Role of Communities in Stewardship Contracting Projects

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Role of Communities in Stewardship Contracting Projects.

DATES: Comments must be received in writing on or before February 13, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management Staff, USDA Forest Service, Mail Stop 1103, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments also may be submitted via facsimile to 202-205-1045 or by e-mail to: InfoCollection0201@fs.fed.us.

The public may inspect comments received at USDA Forest Service, Forest Management, Yates Federal Building, 3rd floor SW wing, 1400 Independence Avenue, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 202-205-1766 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Sharon Nygaard-Scott, Forest Service, Forest Management Staff, 202-205-1766. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Role of Communities in Stewardship Contracting Projects.

OMB Number: 0596-0201.

Expiration Date of Approval: July 31, 2009.

Type of Request: Extension with Revision.

Abstract: Section 323 of Public Law 108-7 (16 U.S.C. 2104 Note) requires the

Forest Service and Bureau of Land Management to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement, the Forest Service conducts surveys to gather the necessary information for use by both Forest Service and Bureau of Land Management. The survey provides information regarding the:

(a) Nature of the local community involved in developing agreement or contract plans,

(b) Nature of roles played by the entities involved in developing agreement or contract plans,

(c) Benefits to the community and agency by being involved in planning and development of contract plans, and

(d) Usefulness of stewardship contracting in helping meet the needs of local communities.

The Pinchot Institute for Conservation and its sub-contractors collect information through an annual phone survey. The survey queries Federal employees, employees of for-profit and not-for-profit institutions, employees of State and local agencies, and individual citizens who have been involved in stewardship contracting projects about their role in the development of agreement or contract plans.

The information collected through the survey is analyzed by the Pinchot Institute for Conservation and its sub-contractors and used to help develop the Forest Service and Bureau of Land Management report to Congress pursuant to Section 323 of Public Law 108-7.

Without the information from this annual collection of data, the Forest Service and Bureau of Land Management will not be able to provide the required annual report to Congress on the role of communities in development of agreement or contract plans under stewardship contracting.

Estimate of Annual Burden: 0.75 hours.

Type of Respondents: Employees of for-profit and non-profit businesses and institutions, as well as individuals.

Estimated Annual Number of Respondents: 350

Estimated Annual Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 263 hours

Comment Is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or

scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 5, 2008.

Charles L. Myers,

Associate Deputy Chief, National Forest System.

[FR Doc. E8-29515 Filed 12-12-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon-Nicolet National Forest; Wisconsin, Northwest Sands Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Washburn Ranger District intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of proposed pine barren restoration project. The Northwest Sands Project area is approximately 25,900 acres in size; about 125 acres of this is not National Forest System land. The project area is located in Bayfield County, approximately six miles northeast of Iron River, Wisconsin. The legal description of the area includes lands lying within the National Forest boundary within T.49 N, R.7 W, Section 23-26, 35, 36; T.49 N, R.6 W, Section 19-22, 27-33; T.48 N, R.8 W, Section 12, 13, 24, 25, 36; T.48 N, R.7 W, Section 1-5, 7-11, 14-23, 26-36; T.48 N, R.6 W, Sections 2, 4-6, 10-16, 21-27; and T.47 N, R.7 W, Sections 3-6, 8-10, 15-17, 20-22. See the **SUPPLEMENTARY INFORMATION** section for the purpose and need for the action.

DATES: Comments concerning the scope of the analysis should be received by January 10, 2009 to receive timely consideration. The draft environmental impact statement is expected in March

2009, and the final environmental impact statement is expected in June 2009.

ADDRESSES: Send written comments to District Ranger Spring Rosales, Chequamegon-Nicolet National Forests, Washburn Ranger District, P.O. Box 578, Washburn, WI 54891. For further information, mail correspondence to Jennifer Maziasz, Project Leader; Washburn Ranger District, P.O. Box 578, Washburn, WI 54891.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The main goal of this project is to restore the pine barrens ecosystem. This includes the restoration of the structure and species composition of the vegetation; the creation of habitat conditions needed for wildlife; and to the extent possible, the re-creation of natural disturbance processes, such as fire, which are essential components of a properly functioning pine barrens ecosystem. For this phase of the restoration effort, the following specific needs were identified: (1) Restore the vegetation species composition and structure that typified the pine barrens that existed under a natural disturbance regime; (2) Re-establish fire as a process in the restoration of the pine barrens ecosystem; (3) Restore small, open areas and "pocket barrens" as a component of the overall landscape; (4) Improve habitat for wildlife species that rely on the pine barrens ecosystem; (5) Rehabilitate the closed ATV play area located in the pine barren management area; and (6) Provide a road system that meets the long term transportation needs, fosters the restoration of the pine barrens ecosystem and reduces overall road density.

Proposed Action

In order to address the needs identified above, approximately 6,250 acres would be harvested to the desired density of trees for the structure of a pine barren ecosystem. Of the 6,250 acres, approximately 1,800 acres of harvest is considered sub merchantable (<4 inches in diameter) or low quality. Approximately 14,850 acres of prescribed fire would be conducted to re-establish fire as a process in the restoration of the pine barrens ecosystem. In order to restore small, open areas and pocket barrens, approximately 285 acres would be mechanically treated either by harvest, brushing and (or) prescribed burning.

The proposed treatment activities described above would greatly improve habitat conditions for wildlife associated with barrens habitat. As part

of those activities, the following actions and design features would be incorporated to enhance the effectiveness of the project in providing favorable habitat conditions for certain species: (1) Three sites (approximately 100 acres) would be managed as refugia for the chryxus arctic and tawny crescent spot butterfly. (2) At least one one-acre patch of recently burned dead trees would be maintained at all times on the landscape to provide favorable habitat for black-backed woodpeckers. (3) 4,800 acres of the open barrens habitat component would be managed as a contiguous large patch to benefit sharp-tailed grouse.

A closed ATV play area (20 acres in size) would be rehabilitated by restoring native ground cover, planting trees, and reshaping major rills and gullies. To provide a road system that meets the long term transportation needs and fosters the restoration of the pine barrens ecosystem the following road actions are proposed: Decommission approximately 55 miles of roads (49 of the 55 miles are currently closed on the ground by overgrown vegetation and (or) berms); convert 1 mile to trail; convert 3 miles to fireline; re-construct (on existing corridors such as old roads or fireline) 17 miles of temporary road; and construct an estimated 6 miles of temporary road to facilitate the initial timber harvest.

Possible Alternatives

Three alternatives to the Proposed Action are being developed in response to public comments received. One alternative increases the quantity and reduces the desired brush cover of the open barrens component (<1 tree per acre) of the pine barren ecosystem. This would result in some additional harvest and mechanical treatment, and increasing the frequency/intensity of prescribed fire in the open barrens designated area. In the two other alternatives implementation of timber harvesting activities and subsequent treatments would occur over a longer period of time. Both alternatives modify the rate of harvest to include multiple harvests (verses 1 harvest entry in the proposed action) over a 15 year period to a selected numbers of stands. One alternative also delays the prescribed burning in the multiple harvest stands and the other does not. This potentially would result in a difference in the flexibility of implementation of the project, wind firmness of the residual trees, risk of invasive species infestation, and the overall economics of the management activities.

Responsible Official

The responsible official for this project is Spring Rosales, Chequamegon-Nicolet National Forests, Washburn Ranger District, P.O. Box 578, Washburn WI 54891.

Scoping Process

The Chequamegon-Nicolet Forest began the scoping process for this project as an environmental assessment during February 2008. Persons and organizations on the District's mailing list were sent information packages, and a notice was placed in the newspaper of record. The project is listed in the Chequamegon-Nicolet Schedule of Proposed Actions, and is viewable on the Forest Web page at <http://www.fs.fed.us/r9/cnnf/>. Click on "Project Proposals and Decisions," then "Northwest Sands Project."

Preliminary Issues

The following issues will be analyzed in the EIS: effects of the proposed activities on soils, water, air quality, Regional Forester Sensitive Species plants and wildlife, and non-native invasive species.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of

these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: December 1, 2008.

Jeanne Higgins,
Forest Supervisor.

[FR Doc. E8-29439 Filed 12-12-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Escalante Ranger District, Dixie National Forest; UT; Pockets Resource Management Forest Service, USDA

ACTION: Notice of intent to prepare a supplement to the final environmental impact statement.

SUMMARY: The USDA Forest Service announces its intent to prepare a supplement to the Pockets Resource Management Project (PRMP) Final Environmental Impact Statement (FEIS). PRMP FEIS evaluated alternatives for vegetation management and associated road improvements within the Englemann spruce/subalpine fir and aspen forest types on the Escalante Ranger District, Dixie National Forest. The original proposed action and subsequent analysis disclosed in the FEIS remains unchanged. The purpose of this supplement is to provide

additional analysis and disclosure on the effects of the proposed action on unroaded and undeveloped areas identified on a 2005 draft map produced during forest plan revision as part of a required inventory and evaluation of areas with wilderness potential. This analysis will focus on the impacts to the wilderness attributes of the three areas being affected by the proposed action.

DATES: Comments concerning the scope of the analysis must be received by February 15, 2009. The draft supplement to the final environmental impact statement is expected in March 2009 and the final environmental impact statement is expected May 2009.

ADDRESSES: Send written comments to Georgina Lampman, District Ranger, P.O. Box 246, Escalante, Utah 84726. Written comments should be specific and should be limited to the scope of this supplement. If you do not have any comments, but wish to remain on the mailing list for this proposal, please send a letter to the above address, or e-mail address listed below and request to be kept informed about the proposal. An e-mail comment mailbox is established for receiving comments electronically at: comments-intermt-dixie-escalante@fs.fed.us. Please use the project name (Pockets Resource Management Project) as the subject line in your e-mail comment message. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or Word (.doc).

FOR FURTHER INFORMATION CONTACT: Mail written correspondence to Marianne Orton, Interdisciplinary Team Leader, Powell Ranger Station, P.O. Box 80, Panguitch, Utah 84759.

SUPPLEMENTARY INFORMATION:

On June 16, 2006 a Notice of Intent to prepare an environmental impact statement for the Pockets Resource Management Project (PRMP) was published in the **Federal Register**. In November 2007 the Notice of Availability of the draft environmental impact statement for the PRMP was published in the **Federal Register**. On July 14, 2008, Robert MacWhorter, Dixie National Forest Supervisor, signed the Record of Decision for the Pockets Resource Management Project Final Environmental Impact Statement and the NOA was published on August 1, 2008. Three organizations including Utah Environmental Congress, Forest Guardians, and Sierra Club, Utah Chapter, appealed Forest Supervisor Robert MacWhorter's decision stating a lack of disclosure on impacts to areas with wilderness potential.

Forest Supervisor Robert MacWhorter withdrew the decision in October 2008 and directed the PRMP Interdisciplinary Team to prepare a Supplement to the FEIS that discloses the impacts to the wilderness potential of the Pacer Lake, Antimony, and Dry Lake areas inventoried during forest plan revision. The Record of Decision for the SEIS will be appealable under 36 CFR 215 and should only address those items pertinent to the disclosure of effects to the wilderness attributes of these areas.

Comment Requested

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft supplement to the final environmental impact statement will be prepared for comment. The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that timely comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed supplement, comments should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement to the statement. Comments may also address the adequacy of the disclosure formulated and discussed in this supplement. Reviewers may wish to

refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Responsible Official

Robert G. MacWhorter, Forest Supervisor, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, Utah 84721.

Dated: December 4, 2008.

Robert G. MacWhorter,

Forest Supervisor

[FR Doc. E8-29429 Filed 12-12-08; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review issued to independent film & television alliance.

SUMMARY: Export Trading Company Affairs ("ETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or e-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal Government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982

and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be non-confidential. An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021-B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 87-8A001."

A summary of the application for an amendment follows.

Summary of the Application:

Applicant: Independent Film & Television Alliance ("IFTA"), 10850 Wilshire Blvd., 9th Floor, Los Angeles, CA 90024.

Contact: Jerald A. Jacobs, Attorney to IFTA, *Telephone:* (202) 663-8011.

Application No.: 87-8A001.

Date Deemed Submitted: December 1, 2008.

The original IFTA Certificate was issued on April 10, 1987 (52 FR 12578, April 17, 1987), and last amended on August 6, 2003 (68 FR 48342, August 13, 2003).

Proposed Amendment: IFTA seeks to amend its Certificate to:

1. Change name of the Certificate holder from "American Film Marketing Association" to the new listing "Independent Film & Television Alliance".

2. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

111 Pictures Ltd, London, United Kingdom.
2929 International, LLC, Beverly Hills, CA.
Action Concept Film und Stuntproduktion GmbH, Huerth/Cologne, Germany.
Alliance Group Entertainment, Las Vegas, NV.
Alpine Pictures, Inc., Burbank, CA.
American Cinema International, Van Nuys, CA.
American World Pictures, Encino, CA.
Artist View Entertainment, Inc., Studio City, CA.
AV Pictures Ltd, London, United Kingdom.
Bleiberg Entertainment, Beverly Hills, CA.
Boll AG, Mainz, Germany.
Bold Films L.P., Los Angeles, CA.
Brainstorm Media, Beverly Hills, CA.
Brightlight Pictures, Inc., Burnaby, Canada.
Capella International, Inc., Los Angeles, CA.
Celluloid Dreams, Paris, France.
Cinamour Entertainment, Encino, CA.
Cine Excel Entertainment, Inc., Gardena, CA.
Cinema Management Group, West Hollywood, CA.
Cinesavvy, Inc., Toronto, Canada.
CJ Entertainment, Inc., Seoul, Republic of (South) Korea.
Classic Media, Inc., New York, NY.
Comerica Entertainment Group, Los Angeles, CA.
ContentFilm International, London, United Kingdom.
Continental Entertainment Capital, Beverly Hills, CA.
DeAPlaneta, Barcelona, Spain.
Distribution Workshop, Kowloon Tong, Hong Kong.
E! Entertainment Television Networks, Los Angeles, CA.
Ealing Studios International, London, United Kingdom.
Echo Bridge Entertainment, Needham, MA.
Emperor Motion Pictures, Wanchai, Hong Kong.
Epic Pictures Group, Inc., Beverly Hills, CA.
Essential Entertainment, Los Angeles, CA.
EuropaCorp, Paris, France.
Fabrication Films, Los Angeles, CA.
Film Department (The), West Hollywood, CA.
First California Bank, Los Angeles, CA.
First Look Studios, Century City, CA.
Foresight Unlimited, Bel Air, CA.
Freemantle Corp. (The), Toronto, Canada.
Fries Film Group, Inc., Woodland Hills, CA.
Gaumont, Neuilly-sur-Seine, France.

GK Films LLC, Santa Monica, CA.
Golden Network Asia Limited,
Kowloon, Hong Kong.
GreeneStreet Films, New York, NY.
GT Media a Gaiam Company, New York,
NY.
HandMade Films International, London,
United Kingdom.
Hollywood Wizard, Northridge, CA.
Hyde Park Entertainment, Sherman
Oaks, CA.
ICB Entertainment Finance, Glendale,
CA.
IM Global, Beverly Hills, CA.
Imageworks Entertainment
International, Inc., Chatsworth, CA.
Imagi Services (USA) Limited, Sherman
Oaks, CA.
Imagination Worldwide, LLC, Beverly
Hills, CA.
Independent Film Sales, London,
United Kingdom.
Insight Film Releasing Ltd., Vancouver,
Canada.
INT Distribution, Inc., Las Vegas, NV.
Intandem Films, London, United
Kingdom.
J.A. Media Ltd., Beijing, China.
K5 International GmbH, Muenchen,
Germany.
Kimmel International, New York, NY.
Koan, Inc., Park City, UT.
Laguna Productions, Inc., Santa Clarita,
CA.
Liberation Entertainment, Inc., Los
Angeles, CA.
Little Film Company (The), Studio City,
CA.
Mainline Releasing, Santa Monica, CA.
Mammoth Distribution, Encino, CA.
MarVista Entertainment, Los Angeles,
CA.
Maverick Global, a division of Maverick
Entertainment Group, Inc., Deerfield,
FL.
Media 8 Entertainment, Sherman Oaks,
CA.
Media Luna Entertainment, Cologne,
Germany.
Meridian Pictures, Shanghai, China.
Myriad Pictures, Santa Monica, CA.
Neoclassics Film Ltd., Los Angeles, CA.
New Films International, Sherman
Oaks, CA.
New Horizons Picture Corp., Los
Angeles, CA.
NonStop Sales AB, Stockholm, Sweden.
Nordisk Film A/S, Valby, Denmark.
North by Northwest Entertainment,
Spokane, WA.
Odd Lot International, Culver City, CA.
Paramount Vantage International, Los
Angeles, CA.
Park Entertainment Ltd., London,
United Kingdom.
Passport International Entertainment,
LLC, Los Angeles, CA.
Peace Arch Entertainment, Marina Del
Rey, CA.
Peninsular Media, Bucks, United
Kingdom.
QED International, Los Angeles, CA.
Quantum Releasing LLC, Burbank, CA.
RHI Entertainment Distribution, LLC,
New York, NY.
Rigel Entertainment, Los Angeles, CA.
Screen Capital International, Beverly
Hills, CA.
Screen Media Ventures, LLC, New York,
NY.
SND, Neuilly sur Seine, France.
Sobini Films, Santa Monica, CA.
Spotlight Pictures, LLC, Hollywood, CA.
Starz Media, Burbank, CA.
SteelBridge Film Works, Inc.,
Clearwater, FL.
Stevens Entertainment Group, Dallas,
TX.
Tandem Communications, Munich,
Germany.
Taurus Entertainment Company,
Glendale, CA.
U.S. Bank, Los Angeles, CA.
UFO International Productions,
Burbank, CA.
UK Film Council, London, United
Kingdom.
Union Bank of California, Los Angeles,
CA.
Vision Films, Sherman Oaks, CA.
Voltage Pictures, Los Angeles, CA.
Wachovia Bank, Los Angeles, CA.
Weinstein Company (The), New York,
NY.
Wild Bunch, Paris, France.
Worldwide Film Entertainment LLC,
Los Angeles, CA.
Yari Film Group, LLC, Los Angeles, CA.
York International, Sherman Oaks, CA;
3. Delete the following companies as
"Members" of the Certificate:
Alliance Communications Corporation,
Beverly Hills, CA.
Alliance Atlantis Communication Corp.,
Toronto, Canada.
Arrow Films International Inc., New
York, NY.
Artisan Entertainment.
Bank of America.
Banque Paribas, Los Angeles, CA.
Behaviour Worldwide, Inc., Los
Angeles, CA.
Beyond Films Ltd.
Big Bear Licensing Corporation, Inc.,
Los Angeles, CA.
Bonneville Worldwide Entertainment,
Encino, CA.
British Film Institute.
Broadstar Entertainment Corporation,
Hollywood, CA.
Buena Vista Film Sales, Burbank, CA.
Buena Vista Television.
BV International Pictures AS.
Carnaby International, London, United
Kingdom.
Castle Hill Productions, Inc.
Cecchi Gori Group.
China Star Entertainment Group, TST,
Kowloon, Hong Kong.
Cinema Financial Services, Inc., New
York, NY.
Cinequanon Pictures International, Los
Angeles, CA.
CLT-UFA, Beverly Hills, CA.
Comerica Bank—California, Los
Angeles, CA.
Concorde-New Horizons Corporation,
Los Angeles, CA.
Cori International: Film and Television,
Los Angeles, CA.
Coutts & Co./Natwest Group, Beverly
Hills, CA.
Crown International.
Discovery Communications, Inc.,
Bethesda, MD.
DZ Bank, London, United Kingdom.
Film Roman, Inc., Los Angeles, CA.
Filmfour International, London, United
Kingdom.
Films (Guernsey) Limited.
Fleetboston Financial, Boston, MA.
Franchise Pictures LLC.
Full Moon Pictures, Hollywood, CA.
G.E.L. Productions, Los Angeles, CA.
Golden Harvest Entertainment Co., Ltd.
Good Times Entertainment, Inc., Bel
Air, CA.
Hamdon Entertainment, Studio City,
VA.
Han Entertainment, Hong Kong.
HBO Enterprises.
Hollywood Previews Entertainment,
Inc., Santa Monica, CA.
Horizon Entertainment.
Horizon Motion Pictures, Inc.
IAC Film & Television, London, United
Kingdom.
Imperial Entertainment Group, Beverly
Hills, CA.
IN-Motion Pictures, Ltd.
Initial Entertainment, Los Angeles, CA.
Interlight Pictures, W. Hollywood, CA.
Intermedia, London, United Kingdom.
Intra Movies SRL, Rome, Italy.
J&M Entertainment, Los Angeles, CA.
JP Morgan.
Kevin Williams Associates, S.A.
King World Productions, Inc., New
York, NY.
Lewis Horwitz Organization, Los
Angeles, CA.
Lolafilms.
Lumiere International, Los Angeles, CA.
Mandate Pictures—not on current
members list.
Marquee Entertainment Inc., Los
Angeles, CA.
MCEG Sterling Entertainment, Los
Angeles, CA.
Melrose Entertainment, Inc., Beverly
Hills, CA.
Miramax International, Los Angeles,
CA.
MTG Media Properties, Ltd., New York,
NY.
Noble Productions, Inc., Los Angeles,
CA.

North American Releasing, Inc.,
Vancouver, Canada.
Oasis Pictures, Los Angeles, CA.
October Films International, New York,
NY.
Overseas Film Group/First Look
Pictures, Los Angeles, CA.
P.C. Films Corporation.
P.M. Entertainment, Sunland, CA.
Pacific Century Bank, Encino, CA.
Pandora Cinema, Santa Monica, CA.
Pearson Television International, Los
Angeles, CA.
Phoenician Entertainment, Sherman
Oaks, CA.
Playboy Entertainment Group, Inc.,
Beverly Hills, CA.
Popcorn Movies—not on current
members list.
Powerhouse Entertainment Group, Inc.,
Beverly Hills, CA.
Quadra Entertainment, Beverly Hills,
CA.
Quixote Productions, Los Angeles, CA.
Redwood Communications, Venice, CA.
Renaissance Films, Ltd.
Republic Bank California N.A., Beverly
Hills, CA.
Republic Entertainment, Inc., Los
Angeles, CA.
RKO Pictures.
Ryscher Entertainment, Santa Monica,
CA.
Scanbox International, Inc., Studio City,
CA.
Seven Arts Entertainment, Hollywood,
CA.
Shapiro/Glickenhau Ent., Studio City,
CA.
Shooting Gallery, The, Beverly Hills,
CA.
Silicon Valley Bank for the activities of
its Entertainment Division, Los
Angeles, CA.
Silver Star Film Corp., Los Angeles, CA.
Solo Entertainment Group, Inc., Beverly
Hills, CA.
Spelling Films International, Los
Angeles, CA.
Splendid Pictures, Inc., Bel Air, CA.
Stadtsparkasse Koeln, Entertainment
Finance.
Starway International, Los Angeles, CA.
The Norkat Company Limited, Beverly
Hills, CA.
Tomorrow Film Corporation.
Trident Releasing.
Trimark Pictures, Santa Monica, CA.
Trust Films (merged with Nordisk).
TVA Films, A Division of Group TVA,
Inc., Montreal, Canada.
United Film Distributors, Inc., Los
Angeles, CA.
Viacom Pictures/Showtime Networks,
Universal City, CA.
Vine International Pictures, Ltd.
Vision International, Beverly Hills, CA.
World Films, Inc, Los Angeles, CA; and
4. Change the names of each of the
following current certificate Members:

Crystal Sky Communications, Los
Angeles, CA to Crystal Sky Worldwide
Sales, LLC, Los Angeles, CA; Liberty
International Entertainment, Los
Angeles, CA to Liberation
Entertainment, Los Angeles, CA;
Lakeshore International Corp.,
Hollywood, CA to Lakeshore
Entertainment Group, Beverly Hills, CA;
Lions Gate Films International, Los
Angeles, CA to LIONSGATE, Santa
Monica, CA; North by Northwest
Distribution, Spokane, WA to North by
Northwest Entertainment, Spokane,
WA; Pathe International, Paris, France
to Pathe Distribution, Paris, France;
Regent Entertainment, Los Angeles, CA
to Regent Worldwide Sales LLC, Los
Angeles, CA; The Works, London,
United Kingdom to Works International
(The), London, United Kingdom.

Dated: December 9, 2008.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8-29538 Filed 12-12-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Broadwater Energy LLC and Broadwater Pipeline LLC

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

ACTION: Notice of Stay—Closure of
Administrative Appeal Decision Record.

SUMMARY: This announcement provides
notice that the Department of Commerce
has stayed, for a period of 60 days,
closure of the decision record in an
administrative appeal filed by
Broadwater Energy LLC and Broadwater
Pipeline LLC (collectively, Broadwater)
under the Coastal Zone Management
Act, 16 U.S.C. 1456 (hereinafter,
Broadwater Federal Consistency
Appeal).

DATES: The decision record for the
Broadwater Federal Consistency Appeal
will now close on February 13, 2009.

ADDRESSES: Materials from the appeal
decision record will be available at the
National Oceanic and Atmospheric
Administration (NOAA), Office of
General Counsel for Ocean Services,
1305 East-West Highway, Room 6111,
Silver Spring, Maryland 20910, and on
the following Web site: [http://
www.ogc.doc.gov/czma.htm](http://www.ogc.doc.gov/czma.htm).

FOR FURTHER INFORMATION CONTACT:
Jamon L. Bollock, Attorney-Advisor,

NOAA Office of General Counsel, at
(301) 713-7393 or via e-mail at
gcos.inquiries@noaa.gov.

SUPPLEMENTARY INFORMATION:

On June 6, 2008, Broadwater filed
notice of an appeal with the Secretary
of Commerce (Secretary) pursuant to
Section 307 of the Coastal Zone
Management Act of 1972 (CZMA), 16
U.S.C. 1456, and NOAA's implementing
regulations found at 15 CFR Part 930,
Subpart H. Broadwater appealed an
objection by the New York State
Department of State (New York) to
Broadwater's proposal to construct and
operate a floating liquefied natural gas
(LNG) terminal and associated pipeline,
which would be located in the New
York waters of Long Island Sound. The
Secretary published a Notice of Appeal
in the **Federal Register** on July 7, 2008.

Under the CZMA, the Secretary may
override New York's objection on the
grounds that the project is consistent
with the objectives or purposes of the
CZMA or otherwise necessary in the
interest of national security. To make
the determination that the proposed
activity is "consistent with the
objectives or purposes of the CZMA,"
the Secretary must find that: (1) The
proposed activity furthers the national
interest as articulated in sections 302 or
303 of the CZMA, in a significant or
substantial manner; (2) the adverse
effects of the proposed activity do not
outweigh its contribution to the national
interest, when those effects are
considered separately or cumulatively;
and (3) no reasonable alternative is
available that would permit the activity
to be conducted in a manner consistent
with enforceable policies of the coastal
management program. 15 CFR 930.121.

The Secretary must close the decision
record in a federal consistency appeal
160 days after the Notice of Appeal is
published in the **Federal Register**. 15
CFR 930.130(a)(1). However, the CZMA
authorizes the Secretary to stay closing
the decision record for up to 60 days
when the Secretary determines it
necessary to receive, on an expedited
basis, any supplemental information
specifically requested by the Secretary
to complete a consistency review or any
clarifying information submitted by a
party to the proceeding related to
information in the consolidated record
compiled by the lead Federal permitting
agency. 15 CFR 930.130(a)(2), (3).

After reviewing the Broadwater
Federal Consistency Appeal decision
record developed to date, the Secretary
has decided to solicit supplemental and
clarifying information. In order to allow
receipt of this information, the Secretary
hereby stays closure of the decision

record, currently scheduled to occur on December 15, 2008, until February 13, 2009.

Additional information about the Broadwater Federal Consistency Appeal and the CZMA appeal process is available on the Department of Commerce's CZMA Consistency Appeals Web site at <http://www.ogc.doc.gov/czma.htm>.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: December 10, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services, NOAA.

[FR Doc. E8-29595 Filed 12-12-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Low-Power Television and Translator Digital Upgrade Program Application Form

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 7845, 1401 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(s) and instructions should be directed to Clifton Beck, NTIA, Room H-4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Low-power Television and Translator Digital Upgrade Program is to assist each eligible low-power television station to receive reimbursement for equipment to

upgrade low-power television stations from analog to digital service in eligible rural communities.

The term "eligible low-power television station" means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

(1) That is itself broadcasting exclusively in analog format; and

(2) That has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005.

II. Method of Collection

The proposed form will be submitted electronically via the Internet or mail.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, state or local government agencies; individuals or households.

Estimated Number of Total Respondents: 5,000.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 15,000.

Estimated Total Annual Cost to the Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: December 9, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-29529 Filed 12-12-08; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 0811251523-81524-01

Spectrum Sharing Innovation Test-Bed Pilot Program

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice, Request for Comments

SUMMARY: This notice describes and seeks comment on the types and depth of testing that the National Telecommunications and Information Administration (NTIA) intends to conduct in Phase I of the Spectrum Sharing Innovation Test-Bed pilot program to assess whether devices employing Dynamic Spectrum Access techniques can share the frequency spectrum with land mobile radio systems.

DATES: Comments are due on or before December 30, 2008.

ADDRESSES: Comments should be sent to the attention of Ed Drocella, Office of Spectrum Management, 1401 Constitution Avenue, N.W., Room 6725, Washington DC, 20230; by facsimile transmission to (202) 482-4595; or by electronic mail to testbed@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Ed Drocella at 202-482-2608 or edrocella@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

One of the recommendations in the Department of Commerce reports for the Presidential Spectrum Policy Initiative directed NTIA, in coordination with the Federal Communications Commission (FCC) and other Federal agencies, to establish a Spectrum Sharing Innovation Test-Bed (Test-Bed) pilot program to examine the feasibility of increased sharing between Federal and non-Federal users. This pilot program is one of the key elements of the President's 21st Century Spectrum Policy Initiative and is an opportunity for Federal agencies to work cooperatively with industry, researchers, and academia to objectively evaluate new technologies that can improve management of the nation's airwaves.

On February 5, 2008, NTIA published a Notice in the **Federal Register** describing the Test-Bed pilot program.¹ Concurrently, the FCC released a Public

¹ Spectrum Sharing Test-Bed, 73 Fed. Reg. 6,710 (NTIA February 5, 2008) (notice of solicitation of participation).

Notice (PN) designating 10 MHz of non-Federal spectrum to be used in the Test-Bed pilot program and providing guidance for participants.² As described in the Notice and the PN, the Test-Bed pilot program will evaluate the ability of Dynamic Spectrum Access (DSA) devices employing spectrum sensing and/or geo-location techniques to share spectrum with land mobile radio (LMR) systems operating in the 410–420 MHz Federal band and in the 470–512 MHz non-Federal band.³ To address potential interference to incumbent spectrum users, the Test-Bed will include both laboratory and field measurements performed in three phases:

Phase I Equipment Characterization. Equipment employing DSA techniques will be sent to the NTIA Institute for Telecommunication Sciences in Boulder, Colorado to undergo characterization measurements of the DSA capabilities in response to simulated environmental signals.

Phase II Evaluation of Capabilities. After successful completion of Phase I, the DSA spectrum sensing and/or geo-location capabilities of the equipment will be evaluated in the geographic area of the Test-Bed.

Phase III Field Operation Evaluation. After successful completion of Phase II, the DSA equipment will be permitted to transmit in an actual radio frequency signal environment. An automatic signal logging capability will be used during operation of the Test-Bed to help resolve interference events if they occur. A point-of-contact will also be established to stop Test-Bed operations if interference is reported.

Eleven parties submitted solicitations of interest to participate in the Test-Bed pilot program. As a result of selection criteria specified in the February 2008 Federal Register Notice, the following parties were selected to participate in the Test-Bed pilot program: Adapt4 LLC, Adaptrum Inc., BAE Systems, Motorola Inc., Shared Spectrum Company, and Virginia Polytechnic Institute and State University.⁴

² See Federal Communications Commission Designates Spectrum and Provides Guidance For Participation in a Spectrum Sharing Innovation Test-Bed, *Public Notice*, ET Docket No. 06-89, 23 FCC Rcd. 1654 (Feb. 5, 2008).

³ Dynamic Spectrum Access technology allows a radio device to (i) evaluate its radio frequency environment using spectrum sensing, geo-location, or a combination of spectrum sensing and geo-location techniques, (ii) determine which frequencies are available for use on a non-interference basis, and (iii) reconfigure itself to operate on the identified frequencies.

⁴ Additional information on the Test-Bed pilot program is available at the following website: <http://www.ntia.doc.gov/ntiahome/frnotices/2006/spectrumshare/comments.htm>.

II. Request for Comments

As discussed in the February 2008 Federal Register Notice, a peer review process will be employed to give the public an opportunity to participate in the development of test plans for the Test-Bed pilot program.⁵ A copy of the draft Phase I test plan is available in HTML, Word, and PDF formats on the following website:

<http://www.ntia.doc.gov/ntiahome/frnotices/2006/spectrumshare/comments.htm>.

On or before December 30, 2008, interested parties wishing to comment on the draft Phase I test plan should submit to the address set forth above, their name, address, phone number, e-mail address and their comments. NTIA will publish the final version of the Phase I test plan on its website.

Dated: December 10, 2008.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E8–29631 Filed 12–12–08; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: National Medal of Technology and Innovation Nomination Application.

Form Number(s): N/A.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 40 hours annually.

Number of Respondents: 1,600 responses per year.

Avg. Hours per Response: 40 hours. The USPTO estimates that it will take the public approximately 40 hours to gather and prepare the necessary information, and submit the information to the USPTO.

Needs and Uses: The public uses the National Medal of Technology and

⁵ There are certain limitations on the peer review process to take into account the proprietary rights of the developers participating in the Test-Bed. As part of the Test-Bed, NTIA may enter into Cooperative Research and Development Agreements or Joint Project Agreements with the equipment developers.

Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by at least six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: Nicholas.A.Fraser@omb.eop.gov. Once submitted, the request will be publically available in electronic format through the Information Collection Review page at www.reginfo.gov.

Copies of the above information collection proposal can be obtained by any of the following methods:

• **E-mail:** Susan.Fawcett@uspto.gov.

Include "0651–00xx National Medal of Technology and Innovation Nomination Application copy request" in the subject line of the message.

• **Fax:** 571–273–0112, marked to the attention of Susan K. Fawcett.

• **Mail:** Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before January 14, 2009 to Nicholas.A.Fraser@omb.eop.gov or by fax (202) 395–5167, marked to the attention of Nicholas A. Fraser.

Dated: December 8, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–29636 Filed 12–12–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057]

Federal Acquisition Regulation; Information Collection; Evaluation of Export Offers

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 evaluation of export offers. 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 13, 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 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Division, GSA (202) 501-4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

Respondents: 100.

Responses Per Respondent: 4.

Annual Responses: 400.

Hours Per Response: 25.

Total Burden Hours: 100.

Obtaining copies of proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0057, Evaluation of Export Offers, in all correspondence.

Dated: December 9, 2008

Al Matera,

Contract Policy Division.

[FR Doc. E8-29547 Filed 12-12-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Control No. 9000-0054 Federal Acquisition Regulation; Information Collection; Submission for OMB Review; U.S.-Flag Air Carriers Certification

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 a currently approved information collection requirement concerning 9000-0054. The OMB 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 13, 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 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, GSA (202) 501-4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if an U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than an U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than U.S.-flag air carrier.

B. Annual Reporting Burden

Respondents: 150

Responses Per Respondent: 2.

Annual Responses: 300.

Hours Per Response: .25.

Total Burden Hours: 75.

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.

9000–0054, Submission for OMB Review; U.S.-Flag Air Carriers Certification, in all correspondence.

Dated: December 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–29550 Filed 12–12–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2008–OS–0157]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Finance and Accounting Service proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on January 14, 2009, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 589–3510.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Freedom of Information/Privacy Act Program Manager listed above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 9, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5015c

SYSTEM NAME:

Freedom of Information Act Requests (April 12, 1999, 64 FR 17634).

CHANGES:

* * * * *

SYSTEM LOCATIONS:

Delete entry and replace with "Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Defense Finance and Accounting Service—Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199–2055.

Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 552, the Freedom of Information Act, as amended, as implemented by DFAS Regulation 5400.7–R; DoD 5400.7–R, DoD Freedom of Information Act Program, and E.O. 9397 (SSN)"

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In second paragraph add "DoD" before "Blanket Routine Uses."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders and electronic storage media."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained for a minimum of

2 years; replies to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency fees (request not appealed), 2 years; requests appealed, 6 years after final determination by agency; control logs, 6 years, report files, 2 years; administrative files, 2 years. Records are destroyed by shredding, pulping, burning or degaussing."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, 8899 E. 56th Street, Indianapolis, IN 46249–0150."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Individuals should provide full name, current address, telephone number, and other information verifiable for the record itself."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Individuals should provide full name, current address, telephone number, and other information verifiable for the record itself."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279–8000."

* * * * *

T5015c

SYSTEM NAME:

Freedom of Information Act Requests.

SYSTEM LOCATION:

Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Defense Finance and Accounting Service—Cleveland Center, 1240 East Ninth Street, Cleveland, OH 44199-2055.

Defense Finance and Accounting Service—Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219-1879.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested documents under the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from the public requesting information under the Freedom of Information Act and the reply, which may include copies of the released record(s), denials, and appeals. Correspondence pertaining to the requests, the information released or withheld, summaries, logs of actions taken, and correspondence from and to other DoD and Federal agencies regarding specific requests of mutual interest.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, the Freedom of Information Act, as amended, as implemented by DFAS Regulation 5400.7-R; DoD 5400.7-R, DoD Freedom of Information Act Program, and E.O. 9397 (SSN).

PURPOSE(S):

To control administrative processing of requests for information made under the provisions of the Freedom of Information Act (FOIA), and to record statistics for the annual FOIA report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name or by control number assigned to the individual case file.

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records are retained for a minimum of 2 years; replies to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency fees (request not appealed), 2 years; requests appealed, 6 years after final determination by agency; control logs, 6 years, report files, 2 years; administrative files, 2 years. Records are destroyed by shredding, pulping, burning or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, Freedom of Information Act/Privacy Act Program Manager, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Individuals should provide full name, current address, telephone number, and other information verifiable for the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves in this system of records should address written inquiries to the Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Individuals should provide full name, current address, telephone number, and other information verifiable for the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Office of Corporate Communications, 6760 E. Irvington Place, Denver, CO 80279-8000.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from requesters, from other federal agencies with collateral interest in a request, and from records which were the subject of requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29510 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID DOD-2008-OS-0158]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 14, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767-5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as

amended, which requires the submission of a new or altered system report.

Dated: December 9, 2008.

Morgan E. Frazier,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

S600.10 CAAE

SYSTEM NAME:

Hazardous Materials Occupational Exposure History Files (September 21, 1999, 64 FR 51109).

CHANGES:

SYSTEM IDENTIFIER:

Delete "CAAE" from the entry.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Records are maintained at the Defense Supply Center Philadelphia (DSCP); the Defense Distribution Center (DDC) and [all] associated distribution depots; Defense Supply Center Richmond (DSCR); Defense Reutilization and Marketing Service (DRMS) and [all] associated Defense Reutilization and Marketing Office sites; Defense Energy Supply Center (DESC); United States Army Ionizing Radiation Dosimetry Center (AIRDC), and the Defense National Stockpile Center (DNSC) and [all] associated sites. Mailing addresses for these locations may be obtained from the System manager identified below.

In addition, records are maintained at the Defense Logistics Support Command, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U. S. Public Health Service and or supporting medical facilities for the purpose of conducting medical examinations and evaluations of DLA employees.

To the regulatory agencies which regulate the management of hazardous materials and personnel exposure for reporting purposes.

To academic and medical institutions and non-government agencies for the purpose of monitoring/evaluating

exposures to hazardous materials and occupational exposure to ionizing radiation.

The DoD "Blanket Routine Uses" apply to this system of records."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved alphabetically by individual's name, Social Security Number (SSN), or employee identification number."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address all written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiries should contain the subject individual's full name, Social Security Number (SSN), or employee identification number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about them contained in this system of records should address all written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiries should contain the subject individual's full name, Social Security Number (SSN), or employee identification number."

* * * * *

S600.10

SYSTEM NAME:

Hazardous Materials Occupational Exposure History Files.

SYSTEM LOCATION:

Records are maintained at the Defense Supply Center Philadelphia (DSCP); the Defense Distribution Center (DDC) and [all] associated distribution depots; Defense Supply Center Richmond (DSCR); Defense Reutilization and Marketing Service (DRMS) and [all] associated Defense Reutilization and Marketing Office sites; Defense Energy Supply Center (DESC); United States Army Ionizing Radiation Dosimetry Center (AIRDC), and the Defense National Stockpile Center (DNSC) and [all] associated sites. Mailing addresses for these locations may be obtained from the System manager identified below.

In addition, records are maintained at the Defense Logistics Support Command, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals working in or visiting hazardous materials storage areas and individuals who have been occupationally exposed to ionizing radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, badge readings, individual or area exposure monitoring results and medical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, Safety Programs; 29 U.S.C. Chapter 15, Occupational Safety and Health; 42 U.S.C. 2201(o), Reports; and E.O. 9397 (SSN).

PURPOSE(S):

To record and maintain data on hazardous materials exposure levels and medical status following annual medical examinations and to comply with reporting requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U. S. Public Health Service and or supporting medical facilities for the purpose of conducting medical examinations and evaluations of DLA employees.

To the regulatory agencies which regulate the management of hazardous materials and personnel exposure for reporting purposes.

To academic and medical institutions and non-government agencies for the purpose of monitoring/evaluating exposures to hazardous materials and occupational exposure to ionizing radiation.

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records may be stored on paper and/or on electronic storage media.

RETRIEVABILITY:

Retrieved alphabetically by individual's name, Social Security Number (SSN), or employee identification number.

SAFEGUARDS:

Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 75 years after birth date of employee, 60 years after date of the earliest document in the file if the date of birth cannot be ascertained, or 30 years after latest separation, or maintained indefinitely as prescribed by law, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environment, Safety and Occupational Health, *Attn:* DES-E, 8725 John J. Kingman Road, Suite 2639, Fort Belvoir, VA 22060-6221, and Heads of the Safety and Health Offices at the DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address all written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiries should contain the subject individual's full name, Social Security Number, or employee identification number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address all written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiries should contain the subject individual's full name, Social Security Number, or employee identification number.

CONTESTING RECORD PROCEDURES:

The DLA procedures for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from dosimetric devices (area and personnel), other detection instrumentation, work logs, site records and assessments, and medical examinations and surveillance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29521 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID DOD-2008-OS-0156]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Threat Reduction Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 14, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767-1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 7, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 9, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 013**SYSTEM NAME:**

Assignment and Correspondence Tracking System.

SYSTEM LOCATION:

Headquarters, Defense Threat Reduction Agency (DTRA), Office of the Chief of Staff, *Attn:* Deputy Chief of Staff/Administration, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060-6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigning, responding to, or subjects of, correspondence and assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain an individual's name, Social Security Number (SSN) within supporting documents, physical and electronic, home and duty addresses, and phone numbers, security clearance data, military or civilian rank/grade, and correspondence or supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

PURPOSE(S):

Establish an electronic system to improve the ability of DTRA to control assignments, correspondence, document actions taken, and locate records for reference purposes. The system is used to initiate, manage, and track assignments coming from outside DTRA as well as those generated within DTRA at the Director, Deputy Director, Chief of Staff, or Enterprise to Enterprise level.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the U.S. Government, contractors, other Government agencies, and private sector entities in the performance of their official duties as they relate to clarifying issues arising from assignments and correspondence under the Assignment and Correspondence Tracking System.

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense's compilation of system of records notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Name and/or Social Security Number (SSN).

SAFEGUARDS:

Paper files are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Electronic media are maintained via an internal Local Area Network (LAN) with workstations and laptops of authorized personnel protected with passwords.

RETENTION AND DISPOSAL:

Paper files are maintained for 2 years. Electronic media remain in the Assignment and Correspondence Tracking System active assignment file for 90 days, then automatically transferred to an accessible archive file for 2 years, then removed from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chief of Staff/DCOS/A, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060-6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Defense Threat Reduction Agency, Office of the Chief of Staff, *Attn:* Deputy Chief of Staff/Administration, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060-6201.

Individuals should furnish their full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Office of the Chief of Staff, *Attn:* Deputy Chief of Staff/Administration, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060-6201.

Individuals should furnish their full name, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for contesting record content are published in 32 CFR part 318, or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual records subjects, DoD databases, correspondence emanating from external sources, and internal DTRA actions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29524 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD-2008-OS-0155]

Privacy Act of 1974; System of Records

AGENCY: Missile Defense Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Missile Defense Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 14, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of Defense, Missile Defense Agency, 7100 Defense Pentagon, *Attn:* Chief Information Officer, Washington, DC 20301-7100.

FOR FURTHER INFORMATION CONTACT: Missile Defense Agency Privacy Office at (703) 882-6125.

SUPPLEMENTARY INFORMATION: The Missile Defense Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, are published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 10, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 9, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MDA01

SYSTEM NAME:

Missile Defense Data Center Catalog System Records.

SYSTEM LOCATION:

Department of Defense, Missile Defense Agency, 7100 Defense Pentagon, ATTN: Chief Information Officer, Washington, DC 20301-7100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting Missile Defense Agency (MDA) missile defense test data. Access to this classified data is restricted to Department of Defense (DoD) personnel and contractors with the appropriate level of security clearance and with a clear, demonstrated and approved need-to-know.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), citizenship, and date and place of birth of the proposed visitor; office phone number and e-mail address, and certification of the proposed visitor's personnel security clearance and certification of any special access authorizations required for the visit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12958, Classified National Security Information; DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM); Missile Defense Agency Directive 3200.06, Mission-Related Scientific and Technical Data/Information Management; Missile Defense Agency Manual 5200.02-M, Information Security Program; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used for the purpose of determining if individuals have the appropriate level of clearance and need-to-know required before allowing them access to the Missile Defense Agency (MDA) classified test data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense (DoD) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DoD compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic media.

RETRIEVABILITY:

Records are retrieved by name, e-mail address and phone number.

SAFEGUARDS:

Records are maintained in a secure, limited access, monitored work area. Physical entry by unauthorized persons is restricted by the use of locks and administrative procedures, and is accessible only to authorized personnel. Access to personal information is restricted to those who require the records in the performance of their official duties and who are properly screened and cleared for need-to-know. Access to computer records is further restricted by the use of passwords, which are changed periodically. Logs are kept and reviewed for valid access. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information and receive annual Information Assurance and Privacy Act training. Paper records are marked "FOUO-PRIVACY ACT PROTECTED DATA" and stored in a locked container when not in use.

RETENTION AND DISPOSAL:

Electronic images are deleted when the user account is deleted from the system. Paper copies are filed in the security office and destroyed by shredding and/or burning on supersession or obsolescence of the authorization document or on transfer, separation, or relief of the individual concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Defense, Missile Defense Agency, 7100 Defense Pentagon, *Attn:* Chief Information Officer, Washington, DC 20301-7100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Department of Defense, Missile Defense Agency, 7100 Defense Pentagon, *Attn:* Chief Information Officer, Washington, DC 20301-7100.

Requests should contain the individual's name, office phone number

or cell phone number, and office e-mail address for contact purposes; the individual will be contacted to verify identity.

Record access procedures: Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the MDA Privacy Office, Missile Defense Agency, 7100 Defense Pentagon, Washington, DC 20301-7100.

Requests should include the requesting individual's name, office phone number or cell phone number, and office e-mail address for contact purposes; the individual will be contacted to verify identity.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29526 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF-2008-0048]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 14, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 10, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 9, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA D

SYSTEM NAME:

Litigation Records (Except Patents) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420. At Headquarters of Major Commands and all levels down to and including Air Force installations worldwide. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All individuals who have brought suit against, or been involved in litigation with, the United States or its officers or employees concerning matters related to the Department of the Air Force; persons against whom litigation has been filed under 28 U.S.C. 1346b, 31 U.S.C. 3702, 42 U.S.C. 2651-3, and 46 U.S.C. App. 741-52; dependents, witnesses, and other persons providing information during the course of litigation."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "All records required to defend the Department of the Air Force in litigation, to include: Litigants' names, Social Security Numbers (SSN), court

pleadings; reports from Department of Defense offices; state and federal agencies; foreign governments; witness statements; surveys; contracts; photographs; legal opinions; personnel, finance, medical, and business records; audits; English translations of foreign documents; and environmental planning documents (including environmental impact statements)."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 8037, Judge Advocate General, Air Force Instruction 51-301, Civil Litigation and E.O. 9397 (SSN)."

PURPOSE(S):

Delete entry and replace with "Used by officers, employees and members of the Air Force to represent the United States in civil litigation; to enable the United States and its officers, employees and members who are counsel for, parties to, or otherwise involved in an official capacity in civil domestic or foreign litigation to obtain information from or consult with other governmental, corporate and private organizations, entities and individuals regarding litigation decisions to be made by The Judge Advocate General and the Department of Justice; to obtain information from or consult with other governmental, corporate and private organizations, entities and individuals in order to create structured settlement proposals; by the Air Force Audit Agency in conducting audits; by the Air Force Board for Correction of Military Records; and by the Defense Finance and Accounting Service and any Air Force financial management office and its officers and employees."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Court of Federal Claims on legislative referral of private relief bills;

To the Department of Veterans Affairs and its officers and employees to adjudicate claims.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper records in file folders and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name of litigant, Social Security Number (SSN) and year of litigation."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by authorized personnel as necessary to accomplish their official duties. Paper records are stored in locked rooms and cabinets. The computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records located at AFLOA/JACL are retired permanently to the Washington National Records Center, Washington, DC 20409-0001. Other command levels dispose of records after two years upon completion of agency action. Files maintained in accordance with 42 U.S.C. 2651-3 are disposed of after two years. Medical malpractice litigation files are retired to the Armed Forces Institute of Pathology. Paper records are disposed of by tearing into pieces, shredding, macerating, pulping, or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries with signature to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation."

Written requests should be signed and include full name and proof of identity."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation."

Written requests should be signed and include full name and proof of identity."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Court records, transcripts of depositions and other hearings, correspondence initiated by parties to litigation, information provided through witness interviews or other discovery methods, reports prepared by or on behalf of the Air Force, reports of Federal, state, local or foreign government agencies and information obtained from witnesses and claimants."

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F051 AF JA D

SYSTEM NAME:

Litigation Records (Except Patents).

SYSTEM LOCATION:

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420. At Headquarters of Major Commands and all levels down to and including Air Force installations worldwide. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have brought suit against, or been involved in litigation with, the United States or its officers or employees concerning matters related to the Department of the Air Force; persons against whom litigation has been filed under 28 U.S.C. 1346b, 31 U.S.C. 3702, 42 U.S.C. 2651-3, and 46 U.S.C. App. 741-52; dependents, witnesses, and other persons providing information during the course of litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records required to defend the Department of the Air Force in litigation, to include: litigants' names; Social Security Numbers (SSN); court pleadings; reports from Department of Defense offices, state and federal agencies; foreign governments; witness statements; surveys; contracts; photographs; legal opinions; personnel, finance, medical, and business records; audits; English translations of foreign documents; and environmental planning documents (including environmental impact statements).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 8037, Judge Advocate General, Air Force Instruction 51-301, Civil Litigation and E.O. 9397 (SSN).

PURPOSE(S):

Used by officers, employees and members of the Air Force to represent the United States in civil litigation; to enable the United States and its officers, employees and members who are counsel for, parties to, or otherwise involved in an official capacity in civil domestic or foreign litigation to obtain information from or consult with other governmental, corporate and private organizations, entities and individuals regarding litigation decisions to be made by The Judge Advocate General and the Department of Justice; to obtain information from or consult with other governmental, corporate and private organizations, entities and individuals in order to create structured settlement proposals; by the Air Force Audit Agency in conducting audits; by the Air Force Board for Correction of Military Records; and by the Defense Finance and Accounting Service and any Air Force financial management office and its officers and employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Court of Federal Claims on legislative referral of private relief bills;

To the Department of Veterans Affairs and its officers and employees to adjudicate claims.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name of litigant, Social Security Number (SSN) and year of litigation.

SAFEGUARDS:

Records are accessed by authorized personnel as necessary to accomplish their official duties. Paper records are stored in locked rooms and cabinets. The computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records located at AFLOA/JACL are retired permanently to the Washington National Records Center, Washington, DC 20409-0001. Other command levels dispose of records after two years upon completion of agency action. Files maintained in accordance with 42 U.S.C. 2651-3 are disposed of after two years. Medical malpractice litigation files are retired to the Armed Forces Institute of Pathology. Paper records are disposed of by tearing into pieces, shredding, macerating, pulping, or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation.

Written requests should be signed and include full name and proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; or to the Staff Judge Advocate at the concerned subordinate command or installation.

Written requests should be signed and include full name and proof of identity.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Court records, transcripts of depositions and other hearings, correspondence initiated by parties to litigation, information provided through witness interviews or other discovery methods, reports prepared by or on behalf of the Air Force, reports of Federal, state, local or foreign government agencies and information obtained from witnesses and claimants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29519 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID USAF-2008-0047]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 14, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 7, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 9, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA B

SYSTEM NAME:

Confidential Financial Disclosure Report (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian personnel; Air Force military personnel in the rank of colonel or below whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are 'advisors' or 'consultants'. Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Contains the individual's name, Social Security Number (SSN), title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counselor/Deputy Counselor review."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 8037, Judge Advocate General; Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees; 5 CFR part 2634; and E.O. 9397 (SSN)."

PURPOSE(S):

Delete entry and replace with "Used in order to determine potential or actual conflicts of interest in the performance of official duties."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in file folders and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or Social Security Number (SSN)."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by authorized personnel as necessary to accomplish their official duties. Paper records are stored in locked rooms and cabinets. The computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained for six years after which they shall be disposed of, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be disposed of when no longer needed in the investigation. Paper records are disposed of by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the system manager or Deputy Standards of Conduct Counselor at any system location."

Written inquiries should include a full name, Social Security Number (SSN), address, daytime telephone number and a signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this

system should address written requests to the system manager or Deputy Standards of Conduct Counselor at any system location."

Written inquiries should include a full name, Social Security Number (SSN), address, daytime telephone number and a signature."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F051 AF JA B

SYSTEM NAME:

Confidential Financial Disclosure Report.

SYSTEM LOCATION:

Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330-1740; The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420; Headquarters of major commands and at all levels down to and including Air Force installations, and unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian personnel; Air Force military personnel in the rank of colonel or below whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are 'advisors' or 'consultants'. Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the individual's name, Social Security Number (SSN), title of the individual's position, date of

appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counselor/Deputy Counselor review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 8037, Judge Advocate General; Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees; 5 CFR part 2634; and E.O. 9397(SSN).

PURPOSE(S):

Used in order to determine potential or actual conflicts of interest in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers records in file folders and electric storage media.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by authorized personnel as necessary to accomplish their official duties. Paper records are stored in locked rooms and cabinets. The computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained for six years after which they shall be disposed of, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be disposed of when no longer needed in the investigation. Paper records are disposed of by tearing into pieces, shredding, pulping, macerating

or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant General Counsel for Civilian Personnel and Fiscal Law, Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330-1740

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the system manager or Deputy Standards of Conduct Counselor at any system location.

Written inquiries should include a full name, Social Security Number (SSN), address, daytime telephone number and a signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the system manager or Deputy Standards of Conduct Counselor at any system location.

Written inquiries should include a full name, Social Security Number (SSN), address, daytime telephone number and a signature.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual or from personnel designated by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-29525 Filed 12-12-08; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: Ability to manufacture and market the technology; manufacturing and marketing ability; time required to bring technology to market and production rate; royalties; technical capabilities; and small business status.

Patent application Serial Number 10/681,627 "Methods for Modulating T Cell Responses by Manipulating Intracellular Signal Transduction" filed 8 October 2003; Patent number 6,632,789 "Methods for Modulating T Cell Responses by Manipulating Intracellular Signal Transduction" issued 14 October 2004; and their related foreign filings.

DATES: Applications for a non-exclusive, exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit application to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500, telephone: 301-319-7428 or E-mail at: Charles.schlagel@med.navy.mil.

Dated: December 8, 2008.

T. M. Cruz,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8-29582 Filed 12-12-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information: Charter School Programs (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A.

Dates:

Applications Available: December 15, 2008.

Deadline for Transmittal of Applications: January 29, 2009.

Deadline for Intergovernmental Review: March 30, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The Secretary awards grants to State educational agencies (SEAs) to enable them to conduct charter school programs in their States. SEAs use their CSP funds to award sub-grants to non-SEA eligible applicants for planning, program design, and initial implementation of a charter school, and to support the dissemination of information about, including information on successful practices in, charter schools.

Priorities: This competition includes five competitive preference priorities. In accordance with 34 CFR 75.105(b)(1) and 34 CFR 75.105(b)(2)(iv), priority 1 is from the notice of final discretionary grant priorities for FY 2009, published in the **Federal Register** on November 21, 2008 (73 FR 70627), and priorities 2 through 5 are from section 5202(e) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 7221a(e).

Competitive Preference Priorities: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional fifty (50) points to an application, depending on how well the application meets one or more of these priorities.

Note: In order to receive preference under these priorities, an applicant must identify the priority or priorities that it believes it meets and provide documentation supporting its claims. In order to receive points for priority 2 or to receive points for priorities 3 through 5, an application must meet priority 2 and must meet one or more of priorities 3 through 5.

An SEA that meets priority 2 but does not meet one or more of priorities 3 through 5 will not receive any points for priorities 2 through 5.

An SEA that does not meet priority 2 but meets one or more of priorities 3 through 5 will not receive any points for priorities 2 through 5.

These priorities are:

Priority 1—Secondary Schools (10 points). Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Priority 2—Periodic Review and Evaluation (10 points). The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as provided under State law or the school's charter.

Priority 3—Number of High-Quality Charter Schools (10 points). The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an SEA applies for a grant under this competition.

Priority 4—One Authorized Public Chartering Agency Other Than a Local Educational Agency (LEA), or an Appeals Process (10 points). The State—

(a) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

Priority 5—High Degree of Autonomy (10 points). The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Note: In responding to each of the competitive preference priorities, the Secretary encourages applicants to provide documentation, including citations and examples from their State's charter school law.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final discretionary grant priorities for

FY 2009, published in the **Federal Register** on November 21, 2008 (73 FR 70627).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

The Administration has requested \$95,838,000 for new awards for the Charter School Programs for FY 2009, of which we intend to use an estimated \$91,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards:

\$500,000–\$10,000,000 per year.

Estimated Average Size of Awards:

\$5,000,000 per year.

Estimated Number of Awards: 6–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Note: Planning and implementation sub-grants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination sub-grants are awarded for a period of up to two years.

Note: The estimated range, size, and number of awards are based on a single 12-month budget period. However, the Department may choose to fund more than 12 months of a project using FY 2009 funds.

III. Eligibility Information

1. Eligible Applicants: SEAs in States with a State statute specifically authorizing the establishment of charter schools.

Note: Non-SEA eligible applicants in States in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA numbers 84.282B and 84.282C.

2. Cost Sharing or Matching: This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. Address to Request Application Package: Leslie Hankerson or Jeanne Siegel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202–5970. **Telephone:** (202) 205–8524 or (202)

205-5482, or by e-mail:
Leslie.Hankerson@ed.gov or
Jeanne.Siegel@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting either program contact person listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. Submission Dates and Times:

Applications Available: December 15, 2008. Deadline for Transmittal of Applications: January 29, 2009.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact either person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: March 30, 2009.

4. Intergovernmental Review: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. Funding Restrictions: The following funding restrictions apply to this competition:

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a sub-grant under this program may use the sub-grant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3))

Use of Funds for Dissemination Activities. An SEA may reserve not more than 10 percent of its grant funds to support dissemination activities. (20 U.S.C. 7221c(f)(1)) A charter school may use those funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program) or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more

new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement. (20 U.S.C. 7221c(f)(6)(B)(i) through (iv))

Award Basis. In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing grant under the program. (34 CFR 75.233(b))

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements.

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the CSP, CFDA Number 84.282A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Charter School Programs at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.282, not 84.282A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting

authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your

application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact either person listed under **FOR FURTHER INFORMATION CONTACT** of section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an

exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Leslie Hankerson or Jeanne Siegel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202-5970. FAX: (202) 205-5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by

hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the authorizing statute for this program and 34 CFR 75.210 of EDGAR and are as follows:

SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (i) through (vi) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (i) through (iv) and (vi) only. SEAs that do not address criterion (v) because they are not proposing to use a portion of their grant funds for dissemination activities will not be penalized. The maximum possible score is 150 points for SEAs that do not propose to use grant funds to support dissemination activities and 180 points for SEAs that propose to use grant funds to support dissemination activities. The maximum possible score for each criterion is indicated in parentheses following the criterion.

(i) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (30 points).

Note: The Secretary encourages the applicant to provide a description of the

objectives for the SEA's charter school grant program and how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program and how the SEA will disseminate best or promising practices of charter schools to each LEA in the State.

(ii) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (30 points).

Note: The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts charter schools from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy charter schools have achieved over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with their State's law.

(iii) The number of high-quality charter schools to be created in the State (30 points).

Note: The Secretary considers the SEA's reasonable estimate of the number of new charter schools to be authorized and opened in the State during the three-year period of this grant.

The Secretary also considers how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and during a year in which the school's enrollment expands significantly.

(iv) The quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (30 points).

Note: In addition to describing the proposed objectives of the SEA charter school grant program and how these objectives will be fulfilled, the Secretary encourages applicants to provide descriptions of the steps to be taken by the SEA to award sub-grant funds to eligible applicants desiring to receive these funds, including descriptions of the peer review process the SEA will use to review applications for assistance, the timelines for

awarding such funds, and how the SEA will assess the quality of the applications.

(v) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6) of the ESEA, the quality of the dissemination activities (15 points) and the likelihood that those activities will improve student academic achievement (15 points).

Note: The Secretary encourages the applicant to describe the steps to be taken by the SEA to award these funds to eligible applicants, including descriptions of the peer review process the SEA will use to review applications for dissemination, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(vi) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (30 points).

Note: The Secretary encourages the applicant to include a strong evaluation plan in the application narrative and to use that plan, as appropriate, to shape the development of the project from the beginning of the grant period. The Secretary encourages the applicant to design the plan so that it includes (a) benchmarks to monitor progress toward specific project objectives and (b) outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. In its plan, we encourage the applicant to identify the individual and/or organization that has agreed to serve as evaluator for the project and to describe the qualifications of that evaluator. We also encourage the applicant to describe, in its application, the evaluation design, indicating: (1) The types of data that will be collected; (2) when various types of data will be collected; (3) the methods that will be used; (4) the instruments that will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

Application Requirements: Applicants applying for CSP grant funds must address both the following application requirements, which are based on the statute, and the selection criteria described in this notice. An applicant may choose to respond to the

application requirements in the context of its responses to the selection criteria.

(i) Describe the objectives of the SEA's charter school grant program and describe how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(ii) Describe how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate;

(iii) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and a year in which the school's enrollment expands significantly;

(iv) Describe how the SEA will disseminate best or promising practices of charter schools to each LEA in the State;

(v) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(vi) If an SEA desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(vii) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. **Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html

4. **Performance Measures:** The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set two performance indicators to measure this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT:

Leslie Hankerson or Jeanne Siegel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W249, Washington, DC 20202-5970.

Telephone: (202) 205-8524 or (202) 205-5482, or by e-mail:

Leslie.Hankerson@ed.gov or

Jeanne.Siegel@ed.gov.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to either program contact persons listed under **FOR FURTHER**

INFORMATION CONTACT of section VII in this notice.

Electronic Access to This Document: You can 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>.

Dated: December 10, 2008.

Amanda L. Farris,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E8-29632 Filed 12-12-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information: Grant Competition To Prevent High-Risk Drinking or Violent Behavior Among College Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

*Catalog of Federal Domestic
Assistance (CFDA) Number:* 84.184H.

Dates:

Applications Available: December 15, 2008.

Deadline for Transmittal of

Applications: January 30, 2009.

*Deadline for Intergovernmental
Review:* April 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students provides awards to develop or enhance, implement, and evaluate campus-and/or community-based strategies to prevent high-risk drinking or violent behavior among college students.

Priorities: These priorities are from the notice of final priorities and selection criteria for this program, published in the **Federal Register** on December 27, 2000 (65 FR 82224–

82226), and the correction notice published in the **Federal Register** on January 10, 2001 (66 FR 1963) (collectively, the Notice of Final Priorities and Selection Criteria).

Absolute Priorities: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet either of these absolute priorities.

These priorities are:

Absolute Priority One—Develop or Enhance, Implement, and Evaluate Campus-and/or Community-Based Strategies to Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving the goals and objectives will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority Two—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies To Prevent Violent Behavior Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress

toward achieving the goals and objectives will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299. (b) The Notice of Final Priority and Selection Criteria. (c) The notice of final eligibility requirement published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested \$2,447,000 for new awards for this program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2009 and in subsequent fiscal years from the list of unfunded applicants from this competition.

Estimated Range of Awards: \$100,000–\$150,000.

Estimated Average Size of Awards: \$136,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs, consortia thereof, public and private nonprofit organizations, including faith-based organizations, and individuals.

Note: The Secretary is limiting eligibility under the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students (CFDA Number 84.184H) to applicants that do not currently have an active grant under this program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds (71 FR 70369).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: www.ed.gov/fund/grant/apply/grantapps/index.html.

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794-1398. Telephone, toll-free: 1-877-433-7827. Fax: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), call toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: www.ed.gov/pubs/edpubs.html or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.184H.

To obtain a copy from the program office, contact: Amalia Cuervo, Office of Safe and Drug-Free Schools, U.S. Department of Education, 550 12th Street SW., room 10113, Washington, DC 20202. Telephone: 202-245-7881 or by e-mail: amalia.cuervo@ed.gov. If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*
Applications Available: December 15, 2008.

Deadline for Transmittal of Applications: January 30, 2009.

Applications for grants under this program may be submitted

electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 1, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students, CFDA Number 84.184H, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students at www.Grants.gov. You must search for

the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.184, not 84.184H).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are

outlined in the Grants.gov 3-Step Registration Guide (see www.grants.gov/section910/).

Grants.govRegistrationBrochure.pdf).

You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please

contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* CFDA Number 84.184H, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.184H) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the Notice of Final Priorities and Selection Criteria and are listed in the application package.

2. *Review and Selection Process:* An additional factor we may consider in selecting an application for an award is the geographic distribution of the projects, in addition to the rank order of applicants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established the following performance measures for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students: (1) The percentage of grantees that achieve a five percent decrease in high-risk drinking among students served by the project (Absolute Priority One) and (2) the percentage of grantees that achieve a five percent decrease in violent behavior among students served by the project (Absolute Priority Two). These measures constitute the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grant will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

VII. Agency Contact**FOR FURTHER INFORMATION CONTACT:**

Amalia Cuervo, Office of Safe and Drug-Free Schools, U.S. Department of Education, 550 12th Street, SW., room 10113, Washington, DC 20202.

Telephone: 202-245-7881 or by e-mail: amalia.cuervo@ed.gov.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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You can view this document in text or PDF at the following site, also: www.ed.gov/programs/dvphighrisk/applicant.html.

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: www.gpoaccess.gov/nara/index.html.

Dated: December 10, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8-29656 Filed 12-12-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

December 10, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00-500-007.

Applicants: Chandeaur Pipe Line Company.

Description: Chandeaur Pipe Line Co submits Sixth Revised Sheet 73 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/08/2008.

Accession Number: 20081210-0091.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP09-39-001.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits Sub. First Revised Sheet *et al.* part of its FERC Gas Tariff, Fourth Revised Volume 1-A.

Filed Date: 12/05/2008.

Accession Number: 20081208-0553.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-135-000.

Applicants: Transcontinental Gas Pipeline Corporation.

Description: Transcontinental Gas Pipe Line Corp submits the Forty-Third Revised Sheet 28 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 12/1/08.

Filed Date: 12/04/2008.

Accession Number: 20081208-0403.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: RP09-136-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline, LLC Original Sheet 1 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 3/1/09.

Filed Date: 12/04/2008.

Accession Number: 20081208-0404.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 16, 2008.

Docket Numbers: RP09-137-000.

Applicants: Northern Natural Gas Company.

Description: Petition of Northern Natural Gas Co for limited waiver of tariff provisions.

Filed Date: 12/05/2008.

Accession Number: 20081208-0402.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-138-000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Co submits Third Revised Sheet 4 *et al.* to FERC Gas Tariff, Second Revised Volume 1-A.

Filed Date: 12/05/2008.

Accession Number: 20081208-0401.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-139-000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Tenth Revised Sheet

11 *et al.* of its FERC Gas Tariff, Original Volume 1.

Filed Date: 12/05/2008.

Accession Number: 20081208-0552.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-140-000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Second Revised Sheet 42A to FERC Gas Tariff 2R2.

Filed Date: 12/05/2008.

Accession Number: 20081208-0549.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-141-000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Ninth Revised Sheet 1 to FERC Gas Tariff 1R2.

Filed Date: 12/05/2008.

Accession Number: 20081208-0548.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-142-000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Eight Revised Sheet 1 to FERC Gas Tariff 1R2.

Filed Date: 12/05/2008

Accession Number: 20081208-0547.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-143-000.

Applicants: Texas Eastern Transmission, L.P.

Description: Texas Eastern Transmission, LP submits request that the Commission acknowledge that the capacity release posting and bidding requirements are unnecessary for negotiated fuel caps associated with the service agreements, etc.

Filed Date: 12/05/2008.

Accession Number: 20081208-0546.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-144-000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Second Revised Volume 1A to its FERC Gas Tariff, effective 2/1/09.

Filed Date: 12/05/2008.

Accession Number: 20081208-0554.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 17, 2008.

Docket Numbers: RP09-145-000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Co, Ltd submits Sixth Revised Sheet 4D *et al.* to FERC Gas Tariff, Second Revised Volume 2, to be effective 12/22/08.

Filed Date: 12/08/2008.

Accession Number: 20081210-0093.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP09-146-000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Co, Ltd submits two Firm Transportation Service Agreements with Williams Gas Marketing, Inc *et al.* and Eleventh Revised Sheet 1 to its FERC Gas Tariff, Second Revised Volume 2, to be effective 12/22/08.

Filed Date: 12/08/2008.

Accession Number: 20081210-0092.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: RP09-147-000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Co submits Seventeenth Revised Sheet 2 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 1/9/09.

Filed Date: 12/08/2008.

Accession Number: 20081210-0094.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: CP07-32-007.

Applicants: Gulf South Pipeline Company, L.P.

Description: Gulf South Pipeline Company, L.P., submits Second Sub Fourteenth Revised Sheet No. 20 *et al.*, to FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective 5/27/08.

Filed Date: 12/03/2008.

Accession Number: 20081205-0029.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: CP09-28-000.

Applicants: Transcontinental Gas Pipe Line Corporation.

Description: Application of City of Alexander City, Alabama for order permitting and approving abandonment of service re Transcontinental Gas Pipe Line Corporation.

Filed Date: 12/04/2008.

Accession Number: 20081208-0555.

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. E8-29620 Filed 12-12-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Wind Hydropower Integration Feasibility Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Draft Wind Hydropower Feasibility Study Report.

SUMMARY: The Western Area Power Administration (Western) is publishing this notice to inform interested parties of the Draft Feasibility Study Report for the Wind Hydropower Integration Feasibility Study (WHFS). The WHFS involved a study on the integration of wind energy generated by Indian tribes

and hydropower generated by the Army Corps of Engineers on the Missouri River to supply power to Western. This study applies only to Western's Upper Great Plains Region (UGPR).

DATES: An entity interested in commenting on the Draft WHFS report must submit written comments to Western's Upper Great Plains Office at the address below. Western must receive written and/or electronic comments by 4 p.m., Mountain Daylight Time, on February 13, 2009. Western reserves the right to not consider any comments received after the prescribed date and time.

Western will hold a public meeting on the Draft Feasibility Study Report associated with the WHFS. The public meeting date is: January 13, at 1 p.m., Mountain Standard Time. The public meeting location is the Best Western Ramkota Hotel, 2111 N. LaCrosse Street, Rapid City, SD.

ADDRESSES: Send written comments to Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266, or e-mail UGPWindHydroFS@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Radecki, Energy Services Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101-1266, telephone (406) 247-7442, or e-mail radecki@wapa.gov.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 2005, Public Law 109-58 amended Title XXVI of the Energy Policy Act of 1992 to, *inter alia*, add a new Section 2606 (25 U.S.C. 3506). Section 2606 requires that the Secretary of Energy, in coordination with the Secretary of the Army and the Secretary [of the Interior], shall conduct a study of the cost and feasibility of developing a demonstration project that uses wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

25 U.S.C. 3506(a) also directed the formation of a study team to include an independent tribal engineer and a Western customer representative. In March 2007, through written correspondence, Western requested nominations for an independent tribal engineer from each of the 25 Indian tribes in the UGPR. Three Indian tribes and one tribal organization responded and served as WHFS study team members. Western solicited non-tribal customer representation through the

Mid-West Electric Consumers Association, which represents the majority of Western's customers in the UGPR. Three UGPR customers served as customer representative project team members.

Western requested public comment on the draft WHFS work plan through notice published in the **Federal Register** / Vol. 72 No. 181, pg. 53560-53561, on Wednesday, September 19, 2007. Additionally, a public meeting was held in Bismarck, North Dakota, on September 27, 2007. The final WHFS work plan was issued on November 5, 2007.

Objectives

Section 2606 (25 U.S.C. 3505 (c)), required that a report describing the results of the study be prepared and include an analysis and comparison of the potential energy cost or benefits to the customers of the Western Area Power Administration through the use of combined wind and hydropower; an economic and engineering evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility; if found feasible, recommendations for a demonstration project to be carried out by the Western Area Power Administration, in partnership with an Indian tribal government or tribal energy resource development organization, and Western Area Power Administration customers to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration; and an identification of the economic and environmental costs of, or benefits to be realized through, a Federal-tribal-customer partnership; and the manner in which a Federal-tribal-customer partnership could contribute to the energy security of the United States.

WHFS Draft Report

Western seeks public comment on the Draft WHFS report.

The Draft WHFS report has been structured to address the requirements of section 2606, as well as incorporate and make best use of previous wind integration and transmission studies. In particular, the study has incorporated the results of the Dakota Wind Transmission study, October 2005, to the extent appropriate. The WHFS report also documents efforts undertaken to fulfill the objectives identified in the WHFS work plan.

Availability of Information

The Draft WHFS report is available for inspection and copying at the UGPR office located at 2900 4th Ave. North, Billings, Montana. Comments and responses to comments on the Draft WHFS report will be available for inspection and copying at this location after the comment period closes. The Draft WHFS report and future WHFS documents are/will be available for viewing at <http://www.wapa.gov/ugp/PowerMarketing/WindHydro/Default.htm>.

WHFS Report Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined the WHFS is encompassed within a class of action listed in Appendix A to Subpart D (10 CFR 1021.410) which lists actions not normally requiring the preparation of either an Environmental Impact Statement or an Environmental Assessment. Specifically, the WHFS action met the categorical exclusion listed under A9 of Appendix A to Subpart D of part 1021 "Information gathering/data analysis/document preparation/dissemination," which specifically includes feasibility studies.

Dated: December 3, 2008.

Timothy J. Meeks,
Administrator.

[FR Doc. E8-29602 Filed 12-12-08; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0255; FRL-8751-7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; EPA ICR No. 0161.11, OMB Control No. 2070-0027

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been

forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OPP-2008-0255, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by mail—Office of Pesticide Programs (OPP), Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Nathanael R. Martin, Field and External Affairs Division, Office of Pesticide Programs, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-305-6475; fax number: 703-305-5884; e-mail address: martin.nathanael@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 11, 2008 (73 FR 33081) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment on this ICR during the 60-day comment period and addressed them in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OPP-2008-0255, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified

above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides

ICR numbers: EPA ICR No. 0161.11, OMB Control No. 2070-0027.

ICR Status: This ICR is scheduled to expire on February 28, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection program is designed to enable EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to

EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticides. Pursuant to 40 CFR part 168, responses to this collection of information are mandatory.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.06 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of pesticides and other agricultural chemicals, exporters of unregistered pesticide products.

Estimated No. of Respondents: 50.

Frequency of Collection: On occasion.

Estimated Total Annual Hour Burden: 24,492 hours.

Estimated Total Annual Labor Costs: \$1,574,306.

Changes in Burden Estimates: The total estimated annual respondent burden for this ICR renewal is 24,492 hours, a reduction of 208 hours from the 24,700 total estimated burden hours in the currently-approved ICR. This change is an adjustment and reflects a decrease in the estimated average annual number of Foreign Purchaser Acknowledgment Statements that will be submitted to EPA.

Dated: December 8, 2008.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E8-29637 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[FRL-8752-1]****Clean Air Act Advisory Committee (CAAAC): Notice of Meeting****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of Meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

DATES & ADDRESSES: Open meeting notice; Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday January 8, 2009 from 8:30 a.m. to 4 p.m. at the Double Tree Hotel at 300 Army Navy Drive, in Arlington, Virginia. Seating will be available on a first come, first served basis. The Permits, New Source Review and Toxics subcommittee will meet on January 7, 2009 from 8:30 a.m. to 12 p.m. The Economic Incentives and Regulatory Innovations subcommittee and Visions and Goals Work Group will meet jointly on January 7, 2009 from approximately 12:45 p.m. to 4:30 p.m. The agenda for the CAAAC full committee meeting on January 8, 2009 will be posted on the Clean Air Act Advisory Committee Web site at <http://www.epa.gov/oar/caaac/>.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR-2004-0075. The Docket office can be reached by e-mail at: a-and-r-docket@epa.gov or Fax: 202-566-9744.

FOR FURTHER INFORMATION CONTACT:

Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564-1082, FAX (202) 564-1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittees, please contact the following individuals: (1) Permits/NSR/Toxics

Integration—Liz Naess, (919) 541-1892; and (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, (202) 564-1667 (3) Mobile Source Technical Review—John Guy, (202) 343-9276 Additional Information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: <http://www.epa.gov/oar/caaac/>.

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564-1082 or childers.pat@epa.gov. To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 9, 2008.

Pat Childers,

Designated Federal Official, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. E8-29646 Filed 12-12-08; 8:45 am]

BILLING CODE 6560-50-P**FEDERAL ELECTION COMMISSION****Sunshine Act Notices****AGENCY:** Federal Election Commission.**DATE AND TIME:** Tuesday, December 16, 2008 at 10 a.m.**PLACE:** 999 E Street, NW., Washington, DC.**STATUS:** This meeting will be closed to the public.**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION:

Mr. Robert Biersack, Press Officer.

Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8-29518 Filed 12-12-08; 8:45 am]

BILLING CODE 6715-01-P**FEDERAL RESERVE SYSTEM****Proposed Agency Information Collection Activities; Comment Request****AGENCY:** Board of Governors of the Federal Reserve System.**SUMMARY:** *Background.* On June 15, 1984, the Office of Management and

Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements, and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 13, 2009.**ADDRESSES:** You may submit comments, identified by FR 2644 (OMB No. 7100-0075) by any of the following methods:

- Agency Web Site:

www.federalreserve.gov. Follow the instructions for submitting comments at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include the OMB control number in the subject line of the message.

- FAX: 202-452-3819 or 202-452-3102.

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

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

Additionally, those providing comments should send a copy by mail to the OMB Desk Officer at the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202-395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documents, will be placed into OMB's public docket files once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: www.federalreserve.gov/boarddocs/reportforms/review.cfm or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Agency form numbers: FR 2644.

OMB control number: 7100-0075.

Frequency: Weekly.

Reporters: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

Annual reporting hours: 120,575 hours.

Estimated average hours per response: 2.65 hours.

Number of respondents: 875.

General description of reports: The FR 2644 is authorized by section 2A and 11(a)(2) of the Federal Reserve Act [12 U.S.C. 225(a) and 248(a)(2)] and by section 7(c)(2) of the International Banking Act [12 U.S.C. 3105(c)(2)] and is voluntary. Individual respondent data are regarded as confidential under the Freedom of Information Act [5 U.S.C. 552(b)(4)].

Abstract: The Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069; OMB No. 7100-0030), the Weekly Report of Assets and Liabilities for Large Banks (FR 2416; OMB No. 7100-0075), and the Weekly Report of Selected Assets (FR 2644; OMB No. 7100-0075) are referred to collectively as the bank credit reports. These three voluntary reports have been the primary source of high-frequency data used in the analysis of current banking developments. The FR 2416 data are used on a stand-alone basis to construct the large domestically chartered bank series. The other two reports collect sample data that are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100-0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100-0032) (Call Reports). Data from all three bank credit reports, together with data from other sources, are used to construct weekly estimates of bank credit, balance sheet data for the U.S. banking industry, sources and uses of banks' funds, and to analyze banking developments.

The Federal Reserve publishes the data in aggregate form in the weekly H.8 statistical release, *Assets and Liabilities of Commercial Banks in the United States*, which is followed closely by other government agencies, the banking industry, the financial press, and other users. This release provides a balance sheet for the banking industry as a whole and data disaggregated by its large domestically chartered, small domestically chartered, and foreign-related components.

Current actions: The Federal Reserve proposes to combine the three bank credit reporting forms into one reporting form, the proposed Weekly Report of

Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644; OMB No. 7100-0075). This report would be collected from an authorized stratified sample of 875 domestically chartered commercial banks and U.S. branches and agencies of foreign banks. The new panel would be significantly smaller than the authorized sample of 1,220 respondents for the current family of reports. The proposed FR 2644 report would be filed by each institution selected for the reporting panel, regardless of its asset size or charter type, and would consist of 34 data items. Improvements to the reporting scheme would include increasing flexibility in analyzing weekly reported bank balance sheet data, adapting the report to fair value accounting as prescribed under the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 159, The Fair Value Option for Financial Assets and Financial Liabilities (FAS 159), improving the data detail on securities, and eliminating data items that are no longer needed at a weekly frequency. The first report for the proposed FR 2644 would be as of July 1, 2009.

Proposed Discontinuance of the FR 2416 and the FR 2069: The current FR 2416 and FR 2069 reporting forms would be discontinued. The current reporting panels for these reporting forms would be shifted to the proposed FR 2644 reporting panel and notified that either the FR 2416 or FR 2069 reporting form had been replaced with the proposed FR 2644 reporting form.

Proposed Revisions to the FR 2644: The new single reporting form would be filed by all selected weekly reporters of bank credit data (large domestically chartered commercial banks, small domestically chartered commercial banks, and U.S. branches and agencies of foreign banks). The Federal Reserve anticipates that having all reporters use the same reporting form would remove the report-related constraints that make it difficult to analyze bank behavior without significantly reducing the accuracy of the resulting bank credit aggregates.

In addition to combining the reporting panels, the Federal Reserve proposes to:

- Adapt this family of reports to fair value accounting by asking banks to include loans and securities held in trading accounts in the appropriate loan or security component,

- Include data items on securities by issuer and type of security instead of by account type (investment account versus trading account),

- Include more detail on mortgage-backed securities (broken out by issuer and collected from all banks),
- Include more data item detail for small domestically chartered banks and U.S. branches and agencies of foreign banks, and
- Delete 10 data items, on net, currently collected on the FR 2416 reporting form that are no longer needed on a weekly basis.

The proposed FR 2644 reporting form would consist of 34 data items, an increase of 13 data items over the current FR 2644 reporting form. The 13 additional data items are:

- Cash and balances due from depository institutions,
- Mortgage-backed securities reported by issuer (U.S. Treasury and agency and other),
- Federal funds sold and reverse repurchase agreements reported by counterparty (commercial banks and others),
- Allowance for loan and lease losses,
- Trading assets,
- Derivatives with a positive fair value,
- All other assets (a residual),
- Total deposits,
- Time deposits of \$100,000 or more,
- Trading liabilities,
- Derivatives with a negative fair value,
- All other liabilities (a residual), and
- Net unrealized gains (losses) on available-for-sale securities.

The proposed additions include several data items that are currently collected from large domestically chartered banks on the FR 2416 and from U.S. branches and agencies of foreign banks on the FR 2069. For the proposed FR 2644, the Federal Reserve revised the methodology for determining the estimated average hours per response based on the weighted average of data items submitted with values greater than zero. Since many smaller current FR 2644 reporters have zero balances on their Call Reports for some of the proposed items, these reporters would not be expected to incur large increases in reporting burden under this proposal.

The following is a discussion of each data item that would be collected on the proposed FR 2644 reporting form.

1. *Cash and balances due from depository institutions.* The proposed FR 2644 reporting form would include a new data item, Cash and balances due from depository institutions, because these data would provide a useful measure of banks' liquidity positions. This data item is included on the current FR 2416 and FR 2069 reporting forms.

2. *Securities (including securities reported as trading assets on the Call Report).* As on the current FR 2644 reporting form, the securities data on the proposed FR 2644 reporting form would include securities held for both investment and trading purposes. Domestically chartered banks that do not report data on Call Report Schedule RC-D would continue to omit trading assets from the securities items on the proposed FR 2644 reporting form. These reporters would include all trading assets in new data item 5, Trading assets, other than loans and securities included above. In addition, the securities data items on the proposed reporting form would continue to be broken down by type of issuer, *i.e.*, U.S. Treasury securities and U.S. Government agency obligations and Other securities. However, within-issuer, data would be further subdivided by type of security, *i.e.*, Mortgage-backed securities and Other.

The increased detail on mortgage-backed securities is needed in order to better analyze banks' investment strategies and their exposure to mortgage-backed securities. Both the FR 2416 and FR 2644 reporting forms collect data on mortgage-backed securities in investment accounts only. The FR 2416 reporting form includes these data items broken out by Pass-through securities and Collateralized Mortgage Obligations and Real Estate Mortgage Investment Conduits. The FR 2069 reporting form does not collect any data on mortgage-backed securities. Under the proposed single reporting form, data on all mortgage-backed securities (whether held in investment or trading accounts) would be collected from all institutions.

The Federal Reserve proposes to continue collecting the securities items inclusive of securities held as trading assets and to implement the proper classification of other trading assets in order to accurately measure bank credit. Currently, FR 2416 and FR 2069 respondents report all trading assets, including loans and other non-security items held as trading assets, in data item 2, Trading assets, and FR 2644 respondents report trading assets in either data item 1, U.S. Treasury securities and U.S. Government agency obligations, data item 2, Other securities, or data item 5, Total assets. On the proposed FR 2644 reporting form, trading assets would be reported in the appropriate security or loan component (data item 2 or 4, respectively) or be included in data item 5, Trading assets, other than securities and loans included above.

3. *Federal funds sold and securities purchased under agreements to resell.* The proposed FR 2644 reporting form would break out this data item by counterparty, *i.e.*, With commercial banks in the U.S. (including U.S. branches and agencies of foreign banks) and With others (including nonbank brokers and dealers in securities and Federal Home Loan Bank). The detail is needed to construct bank credit, which excludes federal funds sold to and reverse repurchase agreements with banks. The FR 2416 and FR 2069 reporting forms include this detail and also include Federal funds sold and securities purchased under agreements to resell with nonbank brokers and dealers in securities.

4. *Loans and leases (including loans reported as trading assets on the Call Report).* The proposed FR 2644 reporting form would include the components of core loans (real estate, commercial and industrial, and consumer loans) at the existing level of detail, but each component would be redefined to include loans held for trading purposes. Core loans form the bulk of bank credit and are studied closely by the Federal Reserve.

The proposed FR 2644 reporting form would redefine each loan item to include loans measured at fair value and reported as trading assets on Call Report Schedule RC-D (for domestically chartered banks) or on Schedule RAL (for U.S. branches and agencies of foreign banks). This inclusion should not prove burdensome for most banks since most do not book loans in their trading accounts. Nonetheless, some large banks have taken up this practice, so including loans held as trading assets in the loan items is necessary to accurately measure bank credit. If a domestically chartered bank does not report data on Schedule RC-D of the Call Report but holds loans as trading assets, it would include those loans in data item 5, Trading assets, other than securities and loans included above.

The data item 4.b, Loans to, and acceptances of, commercial banks in the U.S. (including U.S. branches and agencies of foreign banks) would continue to be included as a separate data item, since interbank loans are excluded from bank credit. Data item 4.e, All other loans and leases, would be included to construct total loans and leases. The FR 2416 and FR 2069 include the data item, Loans for purchasing or carrying securities. The FR 2416 includes the data item, Lease financing receivables (net of unearned income). The proposed FR 2644 report would include these data items in All other loans and leases.

The proposed FR 2644 would define all loan components net of unearned income. The FR 2416 reporting form includes the data item Unearned income, if any, included in items (above). Under the proposed FR 2644 reporting form, this data item would not be reported separately, since all loan items would be reported net of unearned income.

The proposed FR 2644 would include new data item 4.f, Allowance for loan and lease losses. The FR 2416 reporting form includes this data item; however, the FR 2069 reporting form does not. This data item has grown dramatically over the past year, reflecting losses in the troubled credit markets, and is needed to aid the Federal Reserve in monitoring the health of banks' loan portfolios.

5. *Trading assets, other than securities and loans included above.* The proposed FR 2644 reporting form would include two new data items: Trading assets, other than securities and loans included above (which includes derivatives, gold bullion, and other trading assets) and its subcomponent, data item 5.a, Derivatives with a positive fair value (included in item 5 above). The FR 2416 and FR 2069 include the identical data item, Derivatives with a positive fair value held for trading purposes. Domestically chartered commercial banks that do not report on Schedule RC-D of the Call Report would report total trading assets in data item 5, Trading assets, other than securities and loans included above, and would not report any balances in data item 5.a. These data items are needed to monitor trading assets and to better understand how interest rates and market valuations affect the fair value of derivatives.

6. *Other assets.* Net due from related foreign offices (if FFIEC 002 respondent, include head office and other related depository institutions in the U.S.) would be reported on the proposed FR 2644 because it is used in the construction of managed liabilities, an aggregate that is tracked by the Federal Reserve in order to understand the composition of banks' marginal funding sources over time. The FR 2416 and FR 2644 include this data item as Net due from own foreign offices, Edge and agreement subsidiaries, and IBFs. The FR 2069 includes this data item as Net due from head office and other related depository institutions in the U.S. and in foreign countries. The new data item 6.b, All other assets, is needed to complete the asset side of the balance sheet, thereby avoiding measurement problems inherent in collecting a partial balance sheet. All other assets includes

premises and fixed assets, other real estate owned, investments in unconsolidated subsidiaries and associated companies, intangible assets (including goodwill), derivatives with a positive fair value held for purposes other than trading, and all remaining assets.

7. *Total assets.* This data item is reported net of any allowance for loan and lease losses. It equals the sum of data items 1 through 4.e, 5, 6.a, and 6.b minus data item 4.f. To avoid double counting, data item 5.a, Derivatives with a positive fair value (included in item 5 above), is ignored when constructing total assets.

8. *Total deposits.* The proposed FR 2644 would include the new data item 8, Total deposits, because it is a major component of the liabilities side of the balance sheet. The FR 2416 includes the data items Transaction accounts and Nontransaction accounts. The FR 2069 includes the data items Transaction accounts and credit balances and Nontransaction accounts. The proposed FR 2644 would also include data item 8.a, Time deposits of \$100,000 or more (included in item 8 above), because it is an important component of managed liabilities. The Federal Reserve may adjust the cutoff for large time deposits if and when the definition of large time deposits changes on the Call Reports.

9. *Borrowings.* The proposed FR 2644 would include borrowings by counterparty, *i.e.*, From commercial banks in the U.S. (including U.S. branches and agencies of foreign banks) and From others (including FRB and FHLB). These borrowings items are included on the current FR 2416, FR 2644, and FR 2069 reporting forms and are needed in order to construct managed liabilities.

10. *Trading liabilities.* The proposed FR 2644 would include two new data items: Trading liabilities and its subcomponent, data item 10.a, Derivatives with a negative fair value. The FR 2416 and FR 2069 include the identical data items. Domestically chartered commercial banks that do not report on Schedule RC-D of the Call Report would report total trading liabilities in data item 10, Trading liabilities, and would not report any balances in data item 10.a. These data items are needed to construct banks' liability for short positions, which is a component of managed liabilities.

11. *Other liabilities.* Net due to related foreign offices (if FFIEC 002 respondent, include head office and other related depository institutions in the U.S.) would be included on the proposed FR 2644 because it is used to construct managed liabilities. The FR 2416 and FR

2644 include this data item as Net due to own foreign offices, Edge and agreement subsidiaries, and IBFs. The FR 2069 reporting form includes this data item as Net due to head office and other related depository institutions in the U.S. and in foreign countries. The new data item, All other liabilities (including subordinated notes and debentures), is needed to complete the liabilities side of the balance sheet, thereby avoiding measurement problems inherent in collecting a partial balance sheet. In addition to subordinated notes and debentures, All other liabilities includes net deferred tax liabilities, interest and other expenses accrued and unpaid, and derivatives with a negative fair value held for purposes other than trading.

12. *Total liabilities.* This data item is the sum of data items 8, 9.a, 9.b, 10, 11.a, and 11.b (that is, the sum of data items 8 through 11 excluding items 8.a and 10.a, to avoid double counting).

M.1. *Net unrealized gains (losses) on available-for-sale securities.* The proposed FR 2644 would include this new data item to better understand how interest rates and market valuations affect the fair value of available-for-sale securities. The FR 2416 includes this data item while the FR 2069 reporting form does not.

M.2. *Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements.* The proposed FR 2644 would collect data for memorandum item M.2.a, Real estate loans, memorandum item M.2.b, Credit card receivables and other revolving credit plans, and memorandum item M.2.c, Other consumer loans. These data items are currently included on the FR 2416 and FR 2644. The data items, Credit cards and related plans and Other consumer loans, were added to the FR 2416 and FR 2644 in June 2000 to replace items previously included on the (discontinued) monthly Commercial Bank Survey of Consumer Credit (FR 2571; OMB No. 7100-0080). These data items are published on the monthly G.19 release, *Consumer Credit*. The data item Real estate loans was added to the FR 2416 and FR 2644 reporting forms in July 2007 to improve the Federal Reserve's understanding of residential real estate loan originations. These data items are needed to aid the Federal Reserve's interpretation of credit flows even though they are reported by relatively few institutions.

Instructions: The instructions would be revised and clarified in accordance with changes made to the FR 2644 reporting form.

Proposal To Approve Under OMB Delegated Authority the Discontinuance of the Following Reports:

Report title: The Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks; the Weekly Report of Assets and Liabilities for Large Banks.

Agency Form Numbers: FR 2069; FR 2416.

OMB Control Number: 7100-0030; 7100-0075.

Frequency: Weekly.

Reporters: U.S. branches and agencies of foreign banks; Domestically chartered commercial banks.

Annual Reporting Hours: 14,560 hours; 22,386 hours.

Estimated Average Hours per Response: 4.00 hours; 8.61 hours.

Number of Respondents: 70; 50.

Current actions: If the proposal to revise the FR 2644 is approved, then the current FR 2416 and FR 2069 reporting forms would be discontinued. The current reporting panels for these reporting forms would be shifted to the proposed FR 2644 reporting panel and notified that either the FR 2416 or FR 2069 reporting form had been replaced with the proposed FR 2644 reporting form.

Board of Governors of the Federal Reserve System, December 10, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8-29563 Filed 12-12-08; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0027]

General Services Administration Acquisition Regulation; Information Collection; Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, and GSA Form 308)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding contract administration, and quality assurance. A request for public comments was published at 73 FR

30618, May 28, 2008. No comments were received. This OMB clearance expires on January 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary 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.

DATES: Submit comments on or before: January 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, at telephone (202) 501-4082 or via e-mail to jeritta.parnell@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jasmeet Sehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090-0027, Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, and GSA Form 308), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection, GSA's Federal Acquisition Service (FAS) requires documentation from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

Respondents: 4,604.

Total Responses: 116,869.

Total Burden Hours: 7,830.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 3090-0027, Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, and GSA Form 308), in all correspondence.

Dated: December 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8-29629 Filed 12-12-08; 8:45 am]

BILLING CODE 6820-61-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Seeking To Evaluate Commercial Products, or Products in Development, for In Vitro Serological Diagnosis of Pertussis

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Immunization and Respiratory Diseases (NCIRD), Division of Bacterial Diseases (DBD) through its component Branches have lead technical responsibility for research, development and evaluation of diagnostic tools for pertussis and application of these to epidemiologic studies of pertussis. CDC uses epidemiologic, laboratory, clinical, and biostatistical sciences to control and prevent vaccine preventable infectious diseases. CDC also conducts applied research in a variety of settings, and translates the findings of this research into public health practice.

CDC is seeking to evaluate commercial products, or products in development, for in vitro serological diagnosis of pertussis. Specifically these should include tests to detect anti-pertussis toxin antibodies in infected and vaccinated individuals. The tests should be based on standardized reagents commonly used in the field (such as FDA Reference Serum Standard Lot #3 or equivalents). Products will be evaluated in CDC and collaborating laboratories and if appropriate, may be used in epidemiologic validation studies. Data obtained from this comparative analysis may be used by CDC in making recommendations and decisions for diagnosis of pertussis in the public health setting.

Interested organizations that may have candidate products are invited to submit documentation for CDC to assess whether the offered product(s) are at a sufficient stage of development to be included in this comparative analysis. As a minimum, submitted information should be sufficient for CDC to

determine the following for each candidate product:

a. Product package insert or detailed instructions for use

b. Detailed information to determine if the product is calibrated to a recognized standard

c. Preliminary data demonstrating suitability for validation studies

Organizations that have products selected by CDC for this comparative analysis will be required to enter into an appropriate agreement prior to the transfer of any material to CDC. Sample agreements may be viewed at the following Web site: <http://www.cdc.gov/od/ads/techtran/forms.htm>.

All information submitted to CDC will be kept confidential as allowed by relevant federal law, including the Freedom of Information Act (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905). Only information submitted within thirty days of publication of this notice will be reviewed to determine if the offered product(s) will be acceptable for possible inclusion in this comparative analysis.

Responses are preferred in electronic format and can be e-mailed to the attention of Jacqueline Goolsby jgoolsby@cdc.gov. Mailed responses can be sent to the following address: Jackie Goolsby, Branch Manager, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, Division of Bacterial Diseases, 404-639-1319 (Phone), 404-639-3059 (Fax), 1600 Clifton Rd. NE., Mail Stop C-09, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT:

Technical

Dr. M. Lucia Tondella, Division of Bacterial Diseases, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road NE., Mail Stop D-11, Atlanta, GA 30333. Telephone (404) 639-1239, E-Mail at mtondella@cdc.gov.

Business

Lisa Blake-DiSpigna, Technology Development Coordinator, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road NE., Mail Stop A-42, Atlanta, GA 30333. Telephone (404) 639-2620, E-Mail at LBlake-DiSpigna@cdc.gov.

Dated: December 3, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8-29580 Filed 12-12-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10272, CMS-R-254, CMS-29/30, CMS-372, CMS-10001, CMS-10009, CMS-10242 and CMS-R-52]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Hospital Leadership Quality Assessment Tool (HLQAT); *Use:* In 2006, the Hospital Leadership Collaborative (HLC) launched a public-private partnership to develop a CMS-endorsed self-assessment tool, "The Hospital Leadership and Quality Assessment Tool" (HLQAT) to assist hospitals in the improvement of quality through enhanced hospital governance, executive, physician, and clinical engagement. Hospitals leaders will take the HLQAT instrument via Web-based technology. This function will be carried out in conjunction with CMS and the Quality Improvement Organization (QIO) 9th Scope of Work (SOW), to convey the importance of this effort in relation to Medicare and other

public priorities. This administration of the HLQAT seeks responses from approximately a dozen leaders in each hospital, including physicians (e.g., CEO, CMO), board members, director-level, and mid-level clinical managers—these responses can provide a multi-level representation of hospital leadership showing its commitment to institutional change. *Form Number:* CMS-10272 (OMB# 0938-New); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or Other for-profits; *Number of Respondents:* 18,000; *Total Annual Responses:* 36,000; *Total Annual Hours:* 44,820.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Medicare & You Education Program (NMEP) Survey of Medicare Beneficiaries *Use:* The Centers for Medicare and Medicaid Services is requesting a revision of this information collection request to continue to collect information from Medicare beneficiaries, caregivers, health care providers, and health information providers. It is critical for this agency to obtain feedback from the aforementioned groups so that the agency can accurately assess the needs of the Medicare audience. Using random digit dial and/or an administrative sample, members of the Medicare audience will be called and asked to complete the survey via telephone. The results of this survey will be compiled and studied so that communication may be amended to benefit Medicare's audience. The survey has the following objectives: To assess satisfaction with and knowledge of the Medicare program; to gather information on health behaviors and quality of health care; to determine the most used source for Medicare information; and to gather information from health care provider and health information providers. *Form Number:* CMS-R-254 (OMB# 0938-0738); *Frequency:* Once; *Affected Public:* Individuals and Households, Private Sector—Business or other for-profits; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours:* 1,750.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Request for Certification as Rural Health Clinic (RHC) and RHC Survey Report Form and Supporting Regulations in 42 CFR 491.1-491.11; *Use:* The CMS-29 is utilized as an application to be completed by suppliers of RHC services requesting participation in the

Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Automated Survey Process Environment (ASPEN) and related survey and certification databases by the CMS Regional Offices. *Form Number:* CMS-29/30 (OMB# 0938-0074); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 766; *Total Annual Responses:* 766; *Total Annual Hours:* 192.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300-310.; *Use:* States within an approved waiver under section 1915(c) of the act are required to submit a report annually in order for CMS to: (1) Verify that State assurances regarding waiver cost-neutrality are met; and, (2) Determine the waiver's impact on the type, amount, and cost of services provided under the State Plan and health welfare of recipients. *Form Number:* CMS-372 (OMB# 0938-0272); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 49; *Total Annual Responses:* 305; *Total Annual Hours:* 13,115.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Portability and Accountability Act (HIPAA) Nondiscrimination Provisions and Supporting Regulations in 45 CFR 146.121(h) and 121(i)(2)(i); *Use:* If coverage has been denied to any individual because the sponsor of a self-funded non-Federal governmental plan had exempt the plan from the nondiscrimination requirements under 45 CFR 146.180 "Treatment of Non-Federal Governmental Plans", and the plan sponsor subsequently chooses to bring the plan into compliance, the plan sponsor must comply with the requirements under 45 CFR 146.121(i)(2)(i) "Special Transitional Rule for Self-Funded Non-Federal Governmental Plans Exempted under 45 CFR 146.180". To bring the plan into compliance with the requirements, the plan must notify the individual that the plan will be coming into compliance, afford the individual an opportunity to enroll, specify the effective date of compliance, and inform the individual

regarding any enrollment restrictions that may apply under the terms of the plan once the plan is in compliance. *Form Number:* CMS-10001 (OMB# 0938-0827); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 18; *Total Annual Responses:* 18; *Total Annual Hours:* 194.

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Portability and Accountability Act (HIPAA) Nondiscrimination Provisions and Supporting Regulations in 45 CFR 146.121 (f)(2)(v)(A); *Use:* Section 146.121 of the regulations requires Health plans or issuers to disclose in all plan materials the terms of certain wellness programs including the availability of a reasonable alternative standard. Plan participants and their dependents need this information to understand the rights they have under HIPAA. States and the Federal government may need the information supplied by issuers to properly perform their regulatory functions. *Form Number:* CMS-10009 (OMB# 0938-0819); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 2,600; *Total Annual Responses:* 2,600; *Total Annual Hours:* 1,300.

7. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Emergency and Non-Emergency Ambulance Transports and Beneficiary Signature Requirements in 42 CFR 424.36(b); *Use:* In the CY 2008 Physician Fee Schedule (PFS) final rule with comment period, we created an additional exception to the beneficiary signature requirements in § 424.36(b) for emergency ambulance transports (72 FR 66406). The exception allows ambulance providers and suppliers to sign the claim on behalf of the beneficiary, at the time of transport, provided that certain documentation requirements are met. Following publication of the CY 2008 PFS final rule with comment period, ambulance provider and supplier stakeholders requested that we extend the exception in § 424.36(b)(6) to non-emergency ambulance transports, in instances where the beneficiary is physically or mentally incapable of signing the claim form.

The current submission of this information collection request relates to the collection of documentation pertaining to non-emergency ambulance transports. In addition, we are updating the collection of information that relates to the collection of documentation

pertaining to emergency ambulance transports. *Form Number:* CMS-10242 (OMB# 0938-1049); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or Other for-profits and Not-for-profit institutions; *Number of Respondents:* 9,000; *Total Annual Responses:* 13,185,835; *Total Annual Hours:* 1,098,819.

8. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100-405.2171; *Use:* The information collection requirements described herein are part of the Medicare and Medicaid Programs; Conditions for Coverage for End-Stage Renal Disease Facilities. The requirements fall into two categories: Recordkeeping requirements and reporting requirements. With regard to the recordkeeping requirements, CMS uses these conditions for coverage to certify health care facilities that want to participate in the Medicare or Medicaid programs. For the reporting requirements, the information is needed to assess and ensure proper distribution and effective utilization of ESRD treatment resources while maintaining or improving quality of care. The recordkeeping requirements imposed by this collection are no different than other conditions for coverage in that they reflect comparable standards developed by industry organizations such as the Renal Physicians Association, American Society of Transplant Surgeons, National Kidney Foundation, and the National Association of Patients on Hemodialysis and Transplantation. *Form Number:* CMS-R-52 (OMB#: 0938-0386); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profit and Federal government; *Number of Respondents:* 5,415; *Total Annual Responses:* 5,415; *Total Annual Hours:* 131,720.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at

the address below, no later than 5 p.m. on *January 14, 2009*.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Date: *December 5, 2008*.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8-29542 Filed 12-12-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10110, CMS-R-250 and CMS-668B]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Manufacturer Submission of Average Sales Price (ASP) data for Medicare Part B Drugs and Biologicals; **Use:** Section 1847A of the Social Security Act requires that the Medicare Part B payment amounts for covered drugs and biologicals not paid on a cost or prospective payment basis be based upon manufacturers' average sales price data submitted to CMS. CMS will utilize the ASP data to determine

the Medicare Part B drug payment amounts. **Form Number:** CMS-10110 (OMB# 0938-0921); **Frequency:** Quarterly; **Affected Public:** Business or other for-profits; **Number of Respondents:** 180; **Total Annual Responses:** 720; **Total Annual Hours:** 28,800.

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** MPAF Data and Supporting Regulations in 42 CFR 413.337, 413.343, 424.32 and 483.20; **Use:** Resident assessment information that Skilled Nursing Facilities (SNFs) are required to submit is described under section 42 CFR 413.343 and 483.20. The manner necessary to administer the payment rate methodology is described under section 42 CFR 413.337. An assessment form comprised of a subset of resident assessment information has been developed for use by SNFs to satisfy Medicare payment requirements, in lieu of a full Minimum Data Set. The associated burden is the time the SNF staff is required to complete the Medicare PPS Assessment Form (MPAF), SNF staff time to encode, and SNF staff time spent in transmitting the data. **Form Number:** CMS-R-250 (OMB# 0938-0739); **Frequency:** Occasionally; **Affected Public:** Business or other for-profits and Not-for-profit institutions, State, Local, or Tribal Governments, and Federal Governments; **Number of Respondents:** 15,039; **Total Annual Responses:** 3,834,945; **Total Annual Hours:** 2,704,764.

3. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Post Clinical Laboratory Survey Questionnaire and Supporting Regulations in 42 CFR 493.1771, 493.1773, and 493.1777; **Use:** This form is used by the State agency to determine a laboratory's compliance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This information is needed for a laboratory's CLIA certification and recertification. **Form Number:** CMS-668B (OMB# 0938-0653); **Frequency:** Biennially; **Affected Public:** Business or other for-profits and Not-for-profit institutions, State, Local, or Tribal Government, Federal Government; **Number of Respondents:** 21,000; **Total Annual Responses:** 10,500; **Total Annual Hours:** 2,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at <http://www.cms.hhs.gov/>

PaperworkReductionActof1995, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *February 13, 2009*:

1. Electronically. You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. By regular mail. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: December 5, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8-29543 Filed 12-12-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0602]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of the Impact of Coupons Embedded in Direct-to-Consumer Prescription Drug Print Advertisements on Consumer Perceptions of Product Risks and Benefits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for

public comment in response to the notice. This notice solicits comments on a study of the impact of the presence of coupons offering price incentives or rebates on consumers' perceptions of product risks and benefits in direct-to-consumer (DTC) print ads.¹ Notice of proposed information collection for this project was previously published on February 6, 2006 (71 FR 6077) and withdrawn. This revised notice replaces the previous notice.

DATES: Submit written or electronic comments on the collection of information by February 13, 2009.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study of the Impact of Coupons Embedded in Direct-to-Consumer Prescription Drug Print Advertisements on Consumer Perceptions of Product Risks and Benefits

FDA recognizes that the manufacturers, packers, and distributors (sponsors) of prescription human and animal drugs, including biological products for humans, have a First Amendment right to engage in the truthful and non-misleading advertising of their products. An advertisement is misleading, however, if it fails to disclose certain information about the advertised product's uses and risks. Thus, for prescription drugs and biologics, the act requires advertisements to contain "information in brief summary relating to side effects, contraindications, and effectiveness" (21 U.S.C. 352(n)). FDA is responsible for enforcing the act and implementing regulations.

FDA regulations require that prescription drug advertisements that make claims about a product must also include risk information in a "balanced" manner (21 CFR 202.1(e)(5)(ii)), both in terms of the content and presentation of the information. Advertisements that draw attention to the name of the product but do not make representations about the product's indication(s) or dosage recommendations are called reminder advertisements. As a general matter, reminder ads may mention the proprietary and established name of the product and (optionally) contain information about the product's ingredients, dosage form, quantity, price, and manufacturer (21 CFR 202.1(e)(2)(i)). Other written, printed, or graphic information is not prohibited in reminder ads as long as that information does not make a representation or suggestion relating to the product beyond those permitted.

Reminder ads allow sponsors to distribute price sheets, pens, notepads and other minor giveaways featuring the name of the drug product to physicians and other healthcare professionals without requiring a full disclosure of the product's risks. As DTC promotion has increased, sponsors have chosen to create reminder ads for consumers.

On November 1 and 2, 2005, the agency held a part 15 public hearing (70 FR 54054, September 13, 2005) on the topic of direct-to-consumer advertising of prescription drugs and restricted medical devices. During the hearing, the agency received several comments in connection with the potential impact of coupons and other price incentives on consumer perceptions of DTC-advertised products. Sponsors may use ads as a vehicle to offer price incentives to consumers (e.g., "free trial," "buy six get one free"). Coupon promotions are widely used in many product categories and have been the topic of many academic studies. Certain types of coupons, most notably those that appear in the body of an advertisement itself (i.e., are embedded in the advertisement), can positively affect perceptions of the brand.²

People tend to rate owned objects more favorably than those they do not own, even when those objects have been assigned to them at random.³ This has been termed the "mere ownership" or "mere possession" effect. An interesting extension of this effect is provided in research by Sen and Johnson⁴ which has shown that consumers rate a product more favorably when they are simply given a gift certificate or a coupon for that product or service. Other research has examined the effect of warranties. People who viewed an ad with a high warranty perceived the product as being less risky compared to people who saw an ad with a medium or low warranty.⁵

Based on this body of consumer research, the inclusion of a coupon or other price incentive in the body of a DTC ad may affect consumers' perceptions of the risks and benefits of

² LeClerc, France and John D.C. Little, "Can Advertising Copy Make FSI Coupons More Effective?" *Journal of Marketing Research*, 34(4), 473-484, 1997.

³ Beggan, James K., "On the Social Nature of Nonsocial Perception: The Mere Ownership Effect," *Journal of Personality and Social Psychology*, 62(2), 229-237, 1992.

⁴ Sen, Sankar and Eric J. Johnson, "Mere-Possession Effects Without Possession in Consumer Choice," *Journal of Consumer Research*, 24 (June), 105-117, 1997.

⁵ Shimp, Terrence A. and William O. Bearden, "Warranty and Other Extrinsic Cue Effects on Consumers' Risk Perceptions," *Journal of Consumer Research*, 9 (June), 38-47, 1982.

¹ While the Federal Food, Drug, and Cosmetic Act (the act) provides FDA with authority to regulate prescription drug advertisements that are false or misleading, the act does not provide FDA with the authority to regulate the pricing of prescription drugs. Thus, FDA is merely interested in studying the impact, if any, of the presence of coupons in DTC advertisements on consumers' perceptions of product risks and benefits, and recognizes that it does not actually regulate the dollar or other incentive amount of coupons, price incentives, or rebate offers with respect to how they affect the price of prescription drugs or biological products.

the prescription drug. For instance, consumers may assign more weight to benefit claims in cases where a coupon or other price incentive is embedded in the advertisement. For “simple” consumer products, coupons and free trial offers may enable the customer to test new products while minimizing their financial risk of testing the product. For products that consumers can readily test and ones where performance can be adequately verified (termed “search” goods by economists), coupons and free trial offers provide both the consumer and manufacturer an efficient mechanism for matching consumers and products. For more complex products such as prescription drugs where supervision of a physician is required to evaluate both appropriateness and performance, coupons and free trial offers may send different signals.

The proposed exploratory study will examine what impact, if any, the presence of coupons in DTC advertisements may have on consumers’ perceptions of product risks and benefits and the overall impression of the product in DTC full-product and reminder advertisements.⁶

Design Overview

This study will employ a between-subjects crossed factorial design and will focus on consumer print advertising. Fifteen print advertisements will be created using three levels of ad type and five levels of promotional offer. Thus, the factors will be ad type (DTC print reminder; DTC print full product; over-the-counter (OTC) print full product) and offer type (free trial offer; buy one, get one free; money off prescription/purchase cost; money back guarantee; no promotion). Product name and indication will be constant across

conditions. Side effect and risk information will be constant across full product DTC ad conditions. Participants will be asked to read a single print advertisement for a new drug. After reading the advertisement, they will be asked questions about their evaluation of the information presented in the advertisement.

Factors

1. Participants: Consumers will be screened and recruited by the contractor to be currently diagnosed with insomnia or at risk of developing insomnia. Participants will be randomly assigned to experimental cells. Each condition will be balanced with respect to gender.

Because this is the first investigation of this issue with DTC ads, we chose to limit our investigation to one disease condition. We chose to accept this decrease in generality to maximize our ability to detect a subtle difference between promotion types. Participants will be screened to represent a range of education levels (some college or less vs. completed college or more). Because the task presumes basic reading abilities, all participants will have English as their primary language and, as appropriate, be required to have reading glasses when participating in the study.

2. Type of Ad: The following three types of ads will be tested: (1) A full-product ad for a prescription drug, (2) a reminder ad for a prescription drug, and (3) an ad for an OTC drug. An ad for an OTC drug, which typically includes benefit but not risk information, is included to see if prior research findings in the area of consumer package goods can be replicated.

3. Type of Promotion: The following five types of promotions will be tested:

(1) Free trial offer; (2) buy one, get one free; (3) money-off prescription/purchase cost; (4) money back guarantee; and (5) a no promotion condition. With the exception of buy one, get one free, these are promotional variations that have been used in drug advertising. We ask for comment on other promotional types that could be tested.

Procedure

Participants will be shown one ad, for example, a reminder ad for a prescription drug with a free-trial offer coupon embedded. Then the participant will be asked to answer questions examining a number of important perceptions about the product, including perceived riskiness of the drug, likelihood of benefits, and behavioral intent (talking to doctor, product purchase). Finally, demographic and health care utilization information will be collected.

Interviews are expected to last approximately 15 minutes. A total of 1,350 participants will be involved. This will be a one-time (rather than annual) collection of information.

FDA estimates the burden of this collection of information as follows:

FDA estimates that 2,025 individuals will need to be screened to obtain a respondent sample of 1,350. The screener is expected to take 30 seconds, for a total screener burden of 17 hours. The 1,350 respondents will then be asked to respond to a series of questions about the advertisement. We estimate the response burden for the survey to be 15 minutes, for a burden of 337.5 hours. The estimated total burden for this data collection effort is 354.5 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
2,025 (screener)	1	2,025	.008	17
1,350 (questionnaire)	1	1,350	.25	337.5
Total		3,375		354.5

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

⁶ As noted previously in this document, FDA does not have the authority to regulate prescription

drug pricing and we will not be examining prescription drug prices.

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 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-29517 Filed 12-12-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration (HRSA) is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Pursuant to section 100.2 of the VICP's implementing regulation (42 CFR Part 100), the Secretary announces that the revised average cost of a health insurance policy under the VICP is \$382.30 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims. Such notice was delivered to the Court on November 12, 2008.

Dated: December 8, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8-29627 Filed 12-12-08; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 10, 2009.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Room 10, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, PhD., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435-0260, mockrins@nhlbi.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(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 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-29537 Filed 12-12-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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: Center for Inherited Disease Research Access Committee.

Date: January 9, 2009.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate the scientific and technical merit of applications seeking to use the resources and facilities of the CIDR.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Camilla E. Day, PhD., Scientific Review Officer, CIDR National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892 301-402-8837, camilla.day@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-29428 Filed 12-12-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2008-0192]

The National Infrastructure Advisory Council

AGENCY: Directorate for National Protection and Programs, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday January 6, 2009 at the J.W. Marriott's Salons E and F, 1331 Pennsylvania Avenue, Washington, DC 20004.

DATES: The National Infrastructure Advisory Council will meet Tuesday, January 6, 2009 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business.

For additional information, please consult the NIAC Web site, <http://www.dhs.gov/niac>, or contact Matthew Sickbert by phone at 703-235-2888 or by e-mail at Matthew.Sickbert@associates.dhs.gov.

ADDRESSES: The meeting will be held at the J.W. Marriott's Salons E and F, 1331 Pennsylvania Avenue, Washington, DC 20004. While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy J. Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528. Written comments should reach the contact person listed no later than December 30, 2008. Comments must be identified by DHS-2008-0192 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* matthew.sickbert@associates.dhs.gov. Include the docket number in the subject line of the message.

- *Fax:* 703-235-3055.
- *Mail:* Nancy J. Wong, Department of Homeland Security, Directorate for National Protection and Programs, Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or

comments received by the National Infrastructure Advisory Council, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Wong, NIAC Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703-235-2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The January 6, 2009 meeting will include a status report on the Frameworks for Dealing With Disasters and Related Interdependencies Working Group and discussion on establishing a working group for the upcoming study on Infrastructure Resiliency.

The meeting agenda is as follows:

- I. Opening of Meeting: Nancy J. Wong, Designated Federal Officer (DFO), NIAC, Department of Homeland Security (DHS)
- II. Roll Call of Members: Nancy J. Wong, DFO, NIAC, DHS
- III. Opening Remarks and Introductions: NIAC Chairman Erle A. Nye, Chairman Emeritus, TXU Corp; NIAC Vice Chairman, Alfred R. Berkeley, III, Chairman and CEO, Pipeline Trading, LLC; Michael Chertoff, Secretary, DHS (invited). Participating but not expected to make remarks: Paul A. Schneider, Deputy Secretary, DHS (invited); Robert D. Jamison, Under Secretary for the National Protection and Programs Directorate (invited); Scott Charbo, Deputy Under Secretary for the National Protection and Programs Directorate, DHS (invited); Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS (invited); Kenneth L. Wainstein, Assistant to the President for Homeland Security/Counter Terrorism (APHS/CT), Homeland Security Council (invited).
- IV. Approval of October 2008 Minutes: NIAC Chairman Erle A. Nye
- V. Working Group Status Update: NIAC Chairman Erle A. Nye Presiding
 - A. The Frameworks for Dealing With Disasters and Related Interdependencies Working Group: Edmund G. Archuleta, President

and CEO, El Paso Water Utilities, NIAC Member, NIAC Member; James B. Nicholson, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and The Honorable Tim Pawlenty, Governor, The State of Minnesota, NIAC Member

- VI. New Business: NIAC Chairman Erle A. Nye, Vice Chairman Alfred R. Berkeley, III, NIAC Members
 - A. Establishing a Working Group for the Infrastructure Resiliency Study: NIAC Chairman Erle A. Nye Presiding
- VII. Closing Remarks: Robert D. Jamison, Under Secretary for the National Protection and Programs Directorate, DHS (invited); Robert B. Stephan, Assistant Secretary for Infrastructure Protection, DHS (invited)
- VIII. Adjournment: NIAC Chairman Erle A. Nye.

Procedural

While this meeting is open to the public, participation in The National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703-235-2888 as soon as possible.

Dated: December 2, 2008.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. E8-29644 Filed 12-12-08; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-829, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I-829, Petition by Entrepreneur to Remove Conditions; OMB Control No. 1615-0045.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information

collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 13, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2260. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail add the OMB Control Number 1615-0045 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I-829. Should USCIS decide to revise the Form I-829 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I-829.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-829. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals and households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence, and on the conditional residence for his or her spouse and children(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 2 hours and 5 minutes (2.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 416 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: <http://www.regulations.gov/search/index.jsp>

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2260, telephone number 202-272-8377.

Dated: December 10, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8-29562 Filed 12-12-08; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2456-08; DHS Docket No. USCIS-2008-0034]

RIN 1615-ZA79

Automatic Extension of Employment Authorization Documentation for Salvadoran Temporary Protected Status Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: On October 1, 2008, the Department of Homeland Security (DHS) published a Notice in the **Federal**

Register extending the designation of El Salvador for Temporary Protected Status (TPS) through September 9, 2010.

Beneficiaries of TPS for El Salvador are required to re-register and obtain new Employment Authorization Documents (EADs). Since USCIS will not be able to process and re-issue new EADs for all such beneficiaries by the March 9, 2009, expiration date, USCIS has decided to automatically extend the validity of EADs issued to Salvadoran nationals (or aliens having no nationality who last habitually resided in El Salvador) until September 9, 2009. This Notice announces that extension and also explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: This notice is effective December 15, 2008. The automatic extension of EADs will begin on March 10, 2009, and will remain in effect until September 9, 2009.

FOR FURTHER INFORMATION CONTACT: TPS Operations Program Manager, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2060, telephone (202) 272-1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at <http://www.uscis.gov>.

Note: The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1-800-375-5283 (TTY 1-800-767-1833).

SUPPLEMENTARY INFORMATION:

Why is USCIS automatically extending the validity of EADs for Salvadoran TPS beneficiaries?

Considering the large number of applications, it is likely that many re-registrants will not receive their new EADs until after the expiration date of their current EADs. In order to prevent a gap in employment authorization for qualified re-registrants, DHS will automatically extend the validity of EADs for Salvadoran TPS beneficiaries until September 9, 2009.

Who is eligible to receive an automatic six-month EAD extension from March 10, 2009, to September 9, 2009?

You are eligible to receive an automatic six-month extension of an EAD, if you:

- Are a national of El Salvador (or an alien having no nationality who last habitually resided in El Salvador);
- Applied for and received an EAD under the designation of El Salvador for TPS; and
- Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs issued on Form I-766, Employment Authorization Document, bearing an expiration date of March 9, 2009. These EADs must also bear the notation "A-12" or "C-19" on the face of the card under "Category."

If employment authorization is valid until September 9, 2009, why should I file for re-registration now?

DHS has granted a one time automatic extension of EADs through September 9, 2009. This allows USCIS additional time to process EAD applications for re-registrants and ensure that a gap in status does not occur. Applications for re-registration that are received by USCIS on or before December 30, 2008 may be processed prior to the EAD expiration date of March 9, 2009. However, in order to maintain TPS benefits through September 9, 2010, all TPS beneficiaries must comply with the re-registration requirements, and submit any associated application fees or applications for waivers of the fees, described in Federal Notice 73 FR 57128 (October 1, 2008), to USCIS. Those applications that are received after December 30, 2008 may take considerably longer to process. Although this Notice extends the EAD through September 9, 2009, applicants for re-registration should file their applications early to allow ample time for processing so that a gap in TPS benefits does not occur. There will not be a second automatic extension for EAD.

How may employers determine whether an EAD has been automatically extended for six months, through September 9, 2009, and is therefore acceptable for completion of the Form I-9, Employment Eligibility Verification?

An EAD that has been automatically extended for six months by this Notice through September 9, 2009, will bear the notation "A-12" or "C-19" on the face of the Form I-766 under "Category," and have an expiration date of March 9, 2009, on the face of the card. New EADs or extension stickers showing the September 9, 2009, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Salvadoran citizenship.

Employers should accept an EAD as a valid "List A" document and not ask for additional Form I-9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This extension does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1-800-357-2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155. Employees or applicants may call the OSC Employee Hotline at 1-800-255-7688 for information regarding the automatic extension. Additional information is available on the OSC Web site at <http://www.usdoj.gov/crt/osc/index.html>.

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on September 9, 2009?

Eligible TPS aliens will possess an EAD on Form I-766 with an expiration date of September 9, 2010. The EAD will bear the notation "A-12" or "C-19" on the face of the card under "Category," and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I-9?

Qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EAD to their employers, as described above, as proof of identity and employment authorization through September 9, 2009. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through September 9, 2009. After September 9, 2009, a qualified individual may present

a new EAD valid through September 9, 2010.

In the alternative, any legally acceptable document or combination of documents as listed on the Form I-9 may be presented as proof of identity and employment eligibility.

Dated: December 9, 2008.

Michael L. Aytes,

Acting Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. E8-29511 Filed 12-12-08; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5187-N-69]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Disaster Housing Assistance Program (DHAP) Incremental Rent Transition Study

AGENCY: Office of Policy Development and Research.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 29, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Officer, QDAM Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian_Deitzer@hud.gov, telephone (202) 402-8048. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to

OMB, for emergency processing, a proposed information collection requirement as 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: Disaster Housing Assistance Program (DHAP) Incremental Rent Transition Study.

Description of Information Collection: This document provides notice that this emergency request is necessary at this time because it is an essential part of an important study of the incremental rent transition (IRT) aspect of DHAP. This study will compare families transitioning from stepped-up rents (i.e., Phase I families) and \$0 rent (i.e., Phase II/Phase III families) to market rate or assisted housing and measure their outcomes over time. This Information Collection would enable the Department to answer the question of how do you transition people most effectively from rental assistance to market rate housing after a disaster. Additionally, since DHAP differs from the regular Housing Choice Voucher (HCV) program, this study will enable HUD to see if DHAP vouchers and their differential rents are having a different effect on housing, employment, education, health, and other outcomes after DHAP ends February 28, 2009.

OMB Control Number: 2528–Pending.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 3,000; the number of respondents is 3000; the frequency of response is once.

Status: This is a request for a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 9, 2008.

Lillian Deitzer,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. E8–29626 Filed 12–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–70]

Inspector Candidate Assessment Questionnaire

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.

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH-REAC are requested to complete this form. The form is a questionnaire that provides PIH-REAC with basic background information about the individual's inspection skills and abilities.

DATES: *Comments Due Date:* January 14, 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 (2577–0243) 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: Inspector Candidate Assessment Questionnaire.

OMB Approval Number: 2577–0243.

Form Numbers: HUD–50002.

Description of the Need for the Information and its Proposed Use:

Individuals interested in conducting Uniform Physical Condition Standards inspections on behalf of PIH-REAC are requested to complete this form. The form is a questionnaire that provides PIH-REAC with basic background information about the individual's inspection skills and abilities.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	800	1		1		800

Total Estimated Burden Hours: 800.
Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 9, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8-29624 Filed 12-12-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-14015; AK-964-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sealaska Corporation. The lands are in the vicinity of Dall Island, Alaska, and are located in:

Copper River Meridian, Alaska

T. 81 S., R. 84 E.,
 Sec. 21.

Containing approximately 80 acres.

Notice of the decision will also be published four times in the Island News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 14, 2009, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons

who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E8-29601 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1320-EL, WYW177887]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Kiewit Mining Properties Inc. on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 52 N., R. 72 W., 6th P.M., Wyoming
 Sec. 7: Lots 18 through 20;
 Sec. 8: Lots 13 through 16;
 Sec. 17: Lots 1 through 4, 5 (N $\frac{1}{2}$), 6 (N $\frac{1}{2}$), 7 (N $\frac{1}{2}$), 8 (N $\frac{1}{2}$);
 Sec. 18: Lots 5 through 7, 10, 11, 12 (N $\frac{1}{2}$, SW $\frac{1}{4}$), 13 (W $\frac{1}{2}$), 14, 15, 18, 19, 20 (W $\frac{1}{2}$);
 Sec. 19: Lots 5 (W $\frac{1}{2}$), 6, 7, 10, 11, 12 (W $\frac{1}{2}$), 13 (W $\frac{1}{2}$), 14, 15, 17 through 19, 20 (W $\frac{1}{2}$).

Containing 1,448.922 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain structural geology and coal quality data to assess reserves contained in a potential lease at the Buckskin Mine. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number

WYW177887): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Kiewit Mining Properties Inc., Attn: Greg Todd, P.O. Box 3027, Gillette, WY 82717-3027, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of December 19, 2008, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Kiewit Mining Properties Inc., as provided in the **ADDRESSES** section above, no later than thirty days after publication of this invitation in the **Federal Register**.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Dated: December 9, 2008.

Michael J. Madrid,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. E8-29590 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-110]

Meeting of the Central California Resource Advisory Council Off-Highway Vehicle Subcommittee

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council Off-Highway Vehicle (OHV) Subcommittee will meet as indicated below.

DATES: The Bureau of Land Management Central California Resource Advisory Council Off-Highway Vehicle Subcommittee will meet Jan. 24, 2009, at the Tulare County Office of Education Board Room, 2637 W. Burrel Ave., Visalia, CA.

The meeting will run from about from 10 a.m. to noon. Members of the public are welcome to attend the meeting. The subcommittee will conduct organizational business and discuss OHV issues for the subcommittee to address. Depending on weather, a tour of the Tulare Off-Road Vehicle Park, 2300 W. Palge Ave. Tulare, may follow the meeting.

FOR FURTHER INFORMATION CONTACT: BLM Central California Public Affairs Officer David Christy, both at (916) 985-4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in Central California. The RAC approved formation of an OHV Subcommittee in April 2007. The meeting is open to the public. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: December 4, 2008.

David Christy,

Public Affairs Officer.

[FR Doc. E8-29578 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-40-P

and 18 $\frac{2}{3}$ percent, respectively. The lessee paid the required \$500.00 administrative fee for the reinstatement of the lease and \$166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease OKNM 113435, effective the date of termination, March 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

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

Dated: December 9, 2008.

Margie Dupre,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8-29572 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-FB-P

implementing regulations at 43 CFR 2710 and 2720. The purpose of the sale is to dispose of lands which are difficult and uneconomic to manage as part of the public lands.

DATES: Comments regarding the proposed sale must be received by BLM on or before January 29, 2009. Bidding will open on or around March 2, 2009 and will continue for at least 30 days. The date for receipt of final bids will be announced online, with 3 days notice. Bidding may continue beyond the date announced if deemed warranted by GSA due to bidder interest. Other deadline dates for payments, arranging payments, and payment by electronic transfers, are specified in the terms and condition of sale described herein. More specific information on the sale will be contained in an Invitation For Bids which will be available at <http://www.auctionrp.com> or <http://www.propertydisposal.gsa.gov>.

ADDRESSES: Comments regarding the proposed sale should be submitted to BLM, to the attention of the Barstow Field Manager, at the following address: Bureau of Land Management, 2601 Barstow Road, Barstow, California 92311. More detailed information regarding the proposed sale and the land involved, including maps and current appraisal may be reviewed during normal business hours between 8 a.m. and 4 p.m. at the Barstow Field Office. GSA's address for purposes of bid registration will be specified in the Invitation For Bids to be available a <http://www.auctionrp.com>.

FOR FURTHER INFORMATION CONTACT: Richard Rotte, Realty Specialist or Tom Gey, Realty Specialist (951) 697-55352 or via e-mail at Richard_rotte@ca.blm.gov or thomas_gey@ca.blm.gov.

SUPPLEMENTARY INFORMATION: The following public lands in San Bernardino County, California have been identified as available for sale under the 1980 BLM California Desert Conservation Area Plan, as amended, and are proposed for sale. The public lands proposed for sale consist of one parcel of approximately 40 acres. San Bernardino Meridian, California, T.10 N., R.2 W., sec. 32, NE $\frac{1}{4}$ NE $\frac{1}{4}$. On December 15, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-1310-08; OKNM 113435]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 113435

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97-451, The Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease OKNM 113435 from the lessee, Chesapeake Energy Corporation for lands in Woods County, Oklahoma. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, BLM, New Mexico State Office, at (505) 438-7520.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of \$20.00 per acre or fraction thereof, per year,

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000.LVFL58740000.
LXSS003B0000-CACA 50075]

Notice of Realty Action: Competitive Sale of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a parcel of public land in San Bernardino County, California, consisting of approximately 40 acres. The sale will be conducted by the United States General Services Administration (GSA) as an online competitive bid auction, at GSA's Web site: <http://www.auctionrp.com/>. Interested bidders must first register to bid either at <http://www.auctionrp.com> or by mail and submit registration deposits, and once registered, may participate in online bidding. Bids must be equal to or greater than the appraised fair market value of the land. The sale will be completed under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) and the

applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or January 5, 2009, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Proceeds from the sale will be deposited into the Federal Land Disposal Account, pursuant to the Federal Land Transaction Facilitation Act. The lands identified for sale have no known mineral value and the proposed sale would include the conveyance of both the surface and mineral interests of the United States. A bid to purchase the land will constitute an application for conveyance of the mineral interest and in conjunction with the final payment; the applicant will be required to pay a \$50.00 non-refundable filing fee for processing the conveyance of the mineral interest.

The terms and conditions applicable to this sale are as follows:

1. The lands will be conveyed with the following reservations to the United States: (a) A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), (b) A reservation of a right-of-way for a federal aid highway issued to the California Department of Transportation under serial number CALA 6884, and (c) A reservation of a right-of-way to the United States for a road for administrative purposes and for the public under serial number CACA 50518.

2. The lands will also be conveyed subject to the following valid existing rights: (a.) A right of way (ROW) for an access road issued to Golden State Holdings, LLC, under serial number CACA 15388, and (b.) A ROW for a fiber optic cable issued to Sprint Communications Co. under serial number CACA 20105. Parcels may be subject to applications for rights of way received prior to publication of this Notice if processing the application would not adversely affect the marketability or appraised value of a parcel. The encumbrances of record, appearing in the BLM public files for the parcel proposed for sale, are available for review during the hours stated above Monday through Friday at the Barstow Field Office.

3. The lands may also be conveyed subject to such additional easements as may be necessary to authorize existing and proposed roads, public utilities and flood control facilities based on San

Bernardino County's transportation and land management plans.

4. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the lands proposed for sale; and the conveyance will not be on a contingency basis. To the extent required by law, all such parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

5. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interest of the United States; (5) Activities by which solids or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

6. An initial registration deposit of \$10,000 must be provided to GSA to

participate in online bidding. The procedure to register and submit the registration deposit for online bidding will be described in detail in the Invitation For Bids to be available at www.auctionrp.com. Each bid received shall be deemed to be a continuing offer for 90 calendar days after the date of the final bid submittal by a bidder until the bid is accepted or rejected by the Government. If the Government desires to accept any bid after the expiration of the 90 calendar days, the consent of the bidder shall be obtained prior to such expiration.

7. The highest qualifying bid will be declared the high bid and the high bidder will receive written notice. The high bidder will be required to secure his bid with a bid deposit of cash funds equal to 10% of the bid amount within 10 days of being notified that the United States has accepted his bid. The high bidder's \$10,000 registration deposit will be applied to make up a portion of the required 10% bid deposit. Bid results will also be posted on the Internet at GSA's Web site: <http://www.auctionrp.com>.

8. The remainder of the full bid price must be paid within 180 calendar days of the award letter, in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

9. Registration deposits submitted by unsuccessful bidders will be returned by GSA.

10. The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law or is determined to not be in the public interest.

11. Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of California. Certification of qualifications, including citizenship or corporation or partnership, must be provided to the Bureau of Land Management prior to conveyance.

Additional Information: If not sold, the lands described in this Notice may be identified for sale later without

further legal notice and may be offered for sale by sealed bid, internet auction, or oral auction. In order to determine the value, through appraisal, of the land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. Information concerning the sale, including the reservations, sale procedures and conditions, CERCLA and other environmental documents will be available for review at the Barstow Field Office. Most of this information will be available on the Internet at <http://www.ca.blm.gov/ca/st/en/barstow.html>.

Public Comments: The general public and interested parties may submit comments regarding the proposed sale to the attention of the Barstow Field Manager on or before January 29, 2009. Any adverse comments regarding the proposed sale will be reviewed by the California BLM State Director or other authorized official of the Department, who may sustain, vacate, or modify this realty action in whole or in part. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Dated: December 5, 2008.

Tom Pogacnik,

Deputy State Director, Natural Resources (CA-930).

[FR Doc. E8-29571 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000.LVFL58740000.LXSS005B 0000; CACA 49821]

Notice of Realty Action; Proposed Sale of Public Land, California

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: Three parcels of public land totaling 320 acres in Butte County, California, are being considered for direct sale to the CSU Chico Research Foundation under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by January 14, 2009.

ADDRESSES: Address all comments concerning this Notice to Field Manager, Bureau of Land Management (BLM), Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address or phone (530) 224-2122.

SUPPLEMENTARY INFORMATION: The following-described public land in Butte County, California, is being considered for sale under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Mount Diablo Meridian

M.D.M, T. 23 N., R. 2 E., sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

M.D.M, T. 23 N., R. 2 E., sec. 26, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 320 acres in Butte County. (APN: 056-040-017, 056-040-018, 056-050-004)

The 1993 BLM Redding Resource Management Plan, as amended, identifies these parcels of public land as suitable for disposal. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of FLPMA will be analyzed during processing of the proposed sale.

On December 15, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or December 15, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until January 14, 2009, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Redding Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 30 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Redding Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations,

including comments by individuals in their capacity as an official or representative of a business or organization.

Authority: 43 CFR 2711.1–2.

Dated: December 1, 2008.

Steven W. Anderson,
Redding Field Manager.

[FR Doc. E8–29586 Filed 12–12–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000.LVFL58740000.LXSS007B
0000; CACA 49822, 49823, 49824, 49825]

Notice of Realty Action; Proposed Sale of Public Land, California

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: Four parcels of public land totaling 314.54 acres in Tehama County, California, are being considered for sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by January 14, 2009.

ADDRESSES: Address all comments concerning this Notice to Field Manager, Bureau of Land Management (BLM), Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: Susie Rodriguez, Realty Specialist, at the above address or phone (530) 224–2142.

SUPPLEMENTARY INFORMATION: The following-described public land in Tehama County, California, is being considered for sale under the authority of Section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713):

Mount Diablo Meridian

CACA 49822 M.D.M., T. 27 N., R. 2 W., sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$

CACA 49823 M.D.M., T. 27 N., R. 2 W., sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$

CACA 49824 M.D.M., T. 27 N., R. 2 W., sec. 8, lot 1, N $\frac{1}{2}$ NE $\frac{1}{4}$

CACA 49825 M.D.M., T. 27 N., R. 2 W., sec. 8, lots 3, 4, 5

The area described contains 314.54 acres in Tehama County. (APN 049–040–05, 06, 12, 17, and 20)

The 1993 BLM Redding Resource Management Plan, as amended, identifies these parcels of public land as suitable for disposal. Conveyance of the

identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of FLPMA will be analyzed during processing of the proposed sale.

On December 15, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. The subject lands were also segregated for exchange under CACA 44848 FD and CACA 46843 F1, under provisions of the exchange regulations found at 43 CFR 2201.1–1. The exchange segregation is hereby terminated for the lands described in this Notice. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the *Federal Register* of a termination of the segregation, or December 15, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until January 14, 2009, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Redding Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 30 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Redding Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying

information, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Authority: 43 CFR 2711.1–2.

Dated: December 1, 2008.

Steven W. Anderson,
Redding Field Manager.

[FR Doc. E8–29588 Filed 12–12–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000.LVFL58740000.LXSS006B
0000; CACA 47958]

Notice of Realty Action; Proposed Sale of Public Land, California

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: A parcel of public land totaling 80 acres in Tehama County, California, is being considered for sale under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by January 14, 2009.

ADDRESSES: Address all comments concerning this Notice to Field Manager, Bureau of Land Management (BLM), Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: Ilene Emry, Realty Specialist, at the above address or phone (530) 224–2122.

SUPPLEMENTARY INFORMATION: The following-described public land in Tehama County, California, is being considered for sale under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Mount Diablo Meridian

M.D.M., T. 28 N., R. 5 W., sec. 10, W $\frac{1}{2}$ SW $\frac{1}{4}$.

The area described contains 80 acres in Tehama County. (APN: 007-049-09).

The 1993 BLM Redding Resource Management Plan, as amended, identifies this parcel of public land as suitable for disposal. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of FLPMA will be analyzed during processing of the proposed sale. On December 15, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. The subject lands were also segregated for exchange under CACA 46843-F1, under provisions of the exchange regulations found at 43 CFR 2201.1-1. The exchange segregation is hereby terminated for the lands described in this Notice. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or December 15, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1-2(d) prior to the termination date.

Public Comments

For a period until January 14, 2009, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Redding Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 30 days of the initial date of publication of this Notice.

Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Redding Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be

advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Authority: 43 CFR 2711.1-2.

Dated: December 1, 2008.

Steven W. Anderson,
Redding Field Manager.

[FR Doc. E8-29589 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS-2008-MRM-0010]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010-0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for renewal approval of the paperwork requirements in the regulations under 30 CFR part 208. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The previous title of this information collection request (ICR) was "30 CFR Part 208—Sale of Federal Royalty Oil; Sale of Federal Royalty Gas; and Commercial Contracts (Forms MMS-4070, Application for the Purchase of Royalty Oil; MMS-4071,

Letter of Credit; and MMS-4072, Royalty-in-Kind Contract Surety Bond)." The new title of this ICR is "30 CFR Part 208, RIK Oil and Gas."

DATES: Submit written comments on or before January 14, 2009.

ADDRESSES: Submit written comments by either FAX (202) 395-6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010-0119).

Please submit copies of your comments to MMS by the following methods:

- Electronically go to <http://www.regulations.gov>. In the "Comment or Submission" column, enter "MMS-2008-MRM-0010" to view supporting and related materials for this ICR. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link. All comments submitted will be posted to the docket.

- Mail comments to Armand Southall, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010-0119 in your comments.

- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010-0119 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231-3221, or e-mail

armand.southall@mms.gov. You may also contact Armand Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 208, RIK Oil and Gas.

OMB Control Number: 1010-0119.
Bureau Form Number: Forms MMS-4070, MMS-4071, and MMS-4072.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under the Mineral Leasing Act of 1920 (30 U.S.C. 1923), the Indian Mineral Development Act of 1982 (25 U.S.C. 2103), and the Outer Continental Shelf Lands Act (OCS Lands Act, 43 U.S.C. 1353), the

Secretary is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties and other mineral revenues from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

Public laws pertaining to mineral revenues are on our Web site at http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm. These public laws and 30 CFR part 208, as well as specific language in the actual lease documents, authorize the Secretary to sell royalty oil and gas accruing to the United States. The standard lease terms state that royalties are due in amount or in value. The MMS directs communications between MMS operators and royalty-in-kind (RIK) purchasers through commercial contracts, situation-specific "Dear Operator" letters, or, in the case of eligible refiners, through regulations at part 208.

General Information. The MMS is responsible for ensuring that all revenues from Federal and Indian mineral leases are accurately collected and accounted for and appropriately disbursed to recipients. The Federal Government's RIK program became a permanent operational program after several years of pilot project testing. The RIK program takes payment from mineral lessees "in kind" in the form of produced crude oil and natural gas volumes, rather than in cash payments. The lessee transfers the title of the crude oil or natural gas to the Federal Government, and MMS sells the received product (crude oil or natural gas) in the marketplace and disburses revenues as prescribed by law.

The MMS sells Federal oil and gas competitively in the unrestricted marketplace. The MMS also sells some crude oil competitively to eligible refiners (a small and independent refiner, as defined under 30 CFR 208.2). Additionally, when directed, MMS delivers oil or gas to other Federal agencies, as was the case during the most recent fill of the Strategic Petroleum Reserve (SPR), directed by the President in 2007.

The crude oil or natural gas purchasers and eligible refiners report data on three forms—Forms MMS-4070, Application for the Purchase of Royalty Oil; MMS-4071, Letter of Credit; and

MMS-4072, Royalty-in-Kind Contract Surety Bond. These forms are located at <http://www.mrm.mms.gov/rikweb/RIKForms.htm>.

Eligible Refiner Information—Determination of Need. The regulations, at 30 CFR part 208—Sale of Federal Royalty Oil, govern the eligible refiner sale. Under § 208.4(a) and (b) on behalf of the Secretary, MMS performs a Determination of Need prior to the sale of royalty oil. The MMS uses the feedback from the Determination of Need respondents to assess the availability of crude oil supply for eligible refiners and to assess current marketplace conditions. The MMS published the most recent Determination of Need, requesting specific information from interested parties, in the **Federal Register** on January 16, 2008 (73 FR 2938).

(1) **Eligible Refiner Prequalification.** In order to qualify for RIK sales, eligible refiners must prequalify by (a) signing the MMS base contract, "RIK Crude Oil General Terms and Conditions," which is located at <http://www.mrm.mms.gov/rikweb/PDFDocs/gtcexh.pdf>; and (b) providing detailed financial information. Upon prequalification, MMS will issue an amount of unsecured credit, based on the creditability of the offeror.

(2) **Notice of Availability of Royalty Oil.** Under § 208.5, if MMS finds from the Determination of Need process that the program should continue, MMS will then advise industry of a forthcoming RIK crude oil sale for eligible refiners and include administrative details concerning the application, allocation, and contract award processes for the royalty oil. The MMS will also advise industry of specific information about the crude oil types offered for sale and the location of delivery points. As a result of the most recent determination, MMS held an eligible refiner sale August 5–6, 2008, which was announced on July 30, 2008 (73 FR 44279).

Under § 208.10(e), eligible refiners who purchase royalty oil cannot transfer, assign, or sell their rights or interest in a royalty oil contract without written approval of the MMS Director. This provision is intended to ensure that only qualified eligible refiners benefit from these sales of royalty oil.

(3) **Form MMS-4070—Application for the Purchase of Royalty Oil.** Under § 208.6, eligible refiners interested in purchasing royalty oil must submit Form MMS-4070, which is located at <http://www.mrm.mms.gov/ReportingServices/PDFDocs/4070.pdf>. This form serves as certification that the company qualifies as a small and

independent refiner, as defined under § 208.2. The MMS uses the information collected on Form MMS-4070 to determine the eligibility of refiners wanting to enter into contracts to purchase royalty oil under 30 CFR 208.2 and to provide a basis for the allocation of available royalty oil among eligible refiners.

Directed Communications to Operators of Federal Oil and Gas Leases. Collection of RIK crude oil and natural gas for eligible refiners and other RIK purchasers requires communication between MMS and the operators of leases to ensure accurate and timely delivery of MMS' royalty share of production volumes. Information collected through MMS' directed communication is essential for MMS to ensure the delivery and acceptance of verifiable quantities and qualities of crude oil and natural gas.

The types of directed communication and the supporting data, that MMS requires from operators, are standard business practices in the oil and gas industry. Sample "Dear Operator" letters are posted on RIK's Web site at <http://www.mrm.mms.gov/rikweb/RIKOperLts.htm>.

Third-Party Agreements. Section 208.9 requires that eligible refiners who purchase royalty oil must submit to MMS two copies of any written third-party agreements (or two copies of a complete written explanation of any oral third-party agreements) and quality differential agreements. However, in practice, MMS does not currently require eligible refiners to submit these written third-party and quality differential agreements. The MMS reserves the right to request these agreements from eligible refiners, if needed.

Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas. (1) **Offers.** The MMS requires eligible refiners and/or other RIK purchasers to report (a) Actual pricing offers for submission when MMS offers production for competitive sale; (b) statements of financial qualification (audited financial statements or 10K report/statement); and (c) surety instruments, such as a Letter of Credit (LOC), bond, prepayment, or parent guaranty when financial qualification is not sufficient. All LOCs are irrevocable.

The MMS typically offers royalty oil and gas production for sale by Invitation for Offers (IFOs) to those offerors who have previously established their qualifications. The MMS evaluates all offers to determine which combination of price and other terms comprises the

best return to the U.S. Department of the Treasury and to any affected state.

(2) *Financial Statements.* The MMS may request that a bidder submit publicly available statements of its financial condition (updated, if needed) or other related qualification information. The MMS evaluates the bidder's financial and/or qualification information to determine the risk of financial default to the Federal Government.

(3) *Surety Instruments.* Under MMS current practice, eligible refiners are subject to the same requirements as other RIK purchasers regarding MMS-acceptable surety instruments and qualification information. Reporting requirements in § 208.11 discuss surety instruments for eligible refiners. Surety instruments include the broad field of financial instruments that MMS may require, e.g., bonds, prepayments, or parent guaranties. When required, eligible refiners and other RIK purchasers must provide surety documents, i.e., Form MMS-4071, Letter of Credit; Form MMS-4072,

Royalty-In-Kind Contract Surety Bond; or other acceptable commercial surety, within 5 business days prior to the first delivery under the contract. For bonds, MMS requires a specific MMS-approved format. All parent guaranties must specify a dollar amount of the guaranty and the effective term. The surety instruments provide the Federal Government with a means to collect money if purchasers do not report and pay the Federal royalties.

Summary: This collection of information is necessary to support MMS' (1) Requirement of operators to deliver RIK crude oil or natural gas volumes to the purchasers who competitively buy these volumes in the unrestricted market; (2) determination of which refiners qualify as small and independent eligible refiners to purchase royalty oil; and (3) requirement of purchasers and eligible refiners to file actual pricing offers, respective financial statements, and MMS-specified surety instruments.

The MMS requests OMB approval to continue to collect this information. Not

collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of revenues. The MMS protects proprietary information submitted under this collection, and there are no questions of a sensitive nature included in this information collection.

Frequency of Response: On occasion, weekly, monthly, annually, frequency varies within monthly reporting cycle, or as necessary.

Estimated Number and Description of Respondents: 227 Federal lessees and/or operators; and 80 commercial oil and gas purchasers and/or refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,969 hours.

We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary. The following chart shows the estimated annual burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 208—SALE OF FEDERAL ROYALTY OIL, Subpart A—General Provisions				
§ 208.4 Royalty oil sales to eligible refiners.				
208.4(a)	(a) Determination to take royalty oil in kind. The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. * * *.	4	4	16
208.4(b)	(b) Sale to eligible refiners. (1) * * * The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries * * *.	Hour burden covered under § 208.4(a).		
208.4(c)	(c) Upon a determination by the Secretary * * * that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. * * *.	Hour burden covered under § 208.4(a).		
208.4(d)	(d) Interim sales. * * * The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. * * *.	Hour burden covered under § 208.4(a).		
§ 208.6 General application procedures.				
208.6(a) and (b) ..	(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS–4070 with MMS in accordance with instructions provided in the “Notice of Availability of Royalty Oil” and in accordance with any instructions issued by MMS for completion of Form MMS–4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by MMS. The letter of intent must be submitted with a completed Form MMS–4070. (b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS–4070 at the time of application: * * *.	1.25	4	5

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
§ 208.7 Determination of eligibility.				
208.7(a)	(a) The MMS will examine each application and may request additional information if the information in the application is inadequate. * * *.	0.25	1	*1
§ 208.8 Transportation and delivery.				
208.8(a)	(a) * * * The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by MMS.	1	1	1
208.8(b)	(b) * * * If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 206. * * *.	Hour burden covered by OMB Control Number 1010-0140. This provision is no different than the transportation allowances allowed in 30 CFR part 206 for royalties paid in value. The lessee enters allowance amount on Form MMS-2014.		
§ 208.9 Agreements.				
208.9(a)	(a) A purchaser must submit to MMS two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.	1	1	1
§ 208.10 Notices.				
208.10(d)	(d) After MMS notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. * * *.	2	20	40
208.10(e)	(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, MMS. * * * Without express written consent from MMS for a change in ownership, the royalty oil contract shall be terminated. * * *.	1	1	1
§ 208.11 Surety requirements. [For eligible refiners]				
208.11(a), (b), (d), and (e).	(a) The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. * * *. (b) * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * *. (d) The "MMS-specified surety instrument" shall be in the form specified by MMS instructions or approved by MMS. * * *. (e) All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	Hour burden covered under "Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas" section. (Forms MMS-4071, Letter of Credit, and MMS-4072, Royalty-In-Kind Contract Surety Bond).		
§ 208.15 Audits.				
208.15	Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at other such times as may be directed by MMS. * * *.	Audit process. See note.		
Directed Communications to Operators of Federal Oil and Gas Leases				
Contract-Directed	Wyoming Gas	3	3	9
	Natural Gas [Texas 8G and Gulf of Mexico (GOM)]	3	108	324
	GOM Oil	3	64	192

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	SPR Fill Initiative: In January 2008, 70,000 barrels of oil per day were directed toward the SPR. (Oil volumes directed towards the SPR have been halted as of July 1, 2008. This will continue to be the case for the remainder of the year unless the price of oil drops below \$75 bbl. Volumes which were being directed to the SPR have been redirected back to commercial GOM RIK oil sales. Thus, information collection responses will continue at the same level during and after the SPR initiative—the only difference will be under which program they fall.).	3	17	51
	Eligible refiners	3	35	105
Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas				
Contract-Directed	Offers	1	903	903
	Financial Statements	1	20	20
	Surety Instruments	10	30	300
Total Burden			1,212	1,969

Note: The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.

* Rounded up from 0.25.

Estimated Annual Reporting and Recordkeeping “Non-hour” Cost Burden: We have identified no “non-hour” cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to “* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.” Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 9, 2008 (73 FR 19241), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 14, 2009.

Public Comment Policy: We will post all comments in response to this notice on our Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: October 21, 2008.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. E8-29523 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR**Minerals Management Service****Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region**

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents; Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico and Atlantic OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394, or by calling 1-800-200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSI for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of

activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA

Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA. This notice constitutes the public notice of availability of environmental

documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Maritech Resources, Inc., Structure Removal, SEA ES/SR 06-051A.	Ship Shoal (South Addition), Block 331, Lease OCS-G 13631, located 78 miles from the nearest Louisiana shoreline.	7/3/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08-015A	South Marsh Island, Block 8, Lease OCS-G 03401, located 32 miles from the nearest Louisiana shoreline.	7/7/2008
Anadarko Petroleum Corporation, Structure Removal, SEA ES/SR 08-117.	West Cameron (South Addition), Block 613, Lease OCS-G 21059, located 103 miles from the nearest Louisiana shoreline.	7/7/2008
Beryl Oil & Gas, Structure Removal, SEA ES/SR 08-099	South Timbalier, Block 195, Lease OCS-G 03593, located 38 miles from the nearest Louisiana shoreline.	7/8/2008
Union Oil Company of California, Inc., Structure Removal, SEA ES/SR 08-118.	Brazos, Block 376, Lease OCS-G 07215, located 13 miles from the nearest Texas.	7/9/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 96-042A	Ship Shoal, Block 108, Lease OCS 00814, located 23 miles from the nearest Louisiana shoreline.	7/9/2008
Eni U.S. Operating Company, Inc., Structure Removal, SEA ES/SR 08-100.	West Cameron, Block 130, Lease OCS-G 12761, located 22 miles from the nearest Louisiana shoreline.	7/9/2008
Eni U.S. Operating Company, Inc., Structure Removal, SEA ES/SR 99-065C.	Vermilion, Block 313, Lease OCS-G 01172, located 85 miles from the nearest Louisiana shoreline.	7/10/2008
Nexen Petroleum U.S.A., Inc., Structure Removal, SEA ES/SR 08-116.	West Delta, Block 45, Lease OCS-G 00138, located 12 miles from the nearest Louisiana shoreline.	7/14/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08-094.	East Cameron, Block 254, Lease OCS-G 02039, located 74 miles from the nearest Louisiana shoreline.	7/16/2008
Energy Resource Technology GOM, Inc., Well Conductor Removal, SEA ES/SR RPM EC374-SS001.	East Cameron, Block 374, Lease OCS-G 21586, located 103 miles from the nearest Louisiana shoreline.	7/16/2008
EMGS Americas, Geological & Geophysical Exploration for Mineral Resources, SEA T08-10.	Located in the Western Planning Area of the Gulf of Mexico ...	7/16/2008
WesternGeco, LLC, Geological & Geophysical Exploration for Mineral Resources, SEA T08-11.	Located in the Western Planning Area of the Gulf of Mexico ...	7/16/2008
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 08-102.	Main Pass, Block 161, Lease OCS-G 26151, located 18 miles from the nearest Louisiana shoreline.	7/16/2008
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 08-101.	Brazos, Block 365, Lease OCS-G 09008, located 10 miles from the nearest Texas shoreline.	7/17/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08-112.	High Island, Block 115, Lease OCS-G 18936, located 20 miles from the nearest Texas shoreline.	7/17/2008
Apache Corporation, Structure Removal, SEA ES/SR 08-050A	High Island, Block A6, Lease OCS-G 04734, located 34 miles from the nearest Texas shoreline.	7/17/2008
Coastal Planning & Engineering, Inc., Geological & Geophysical Exploration for Mineral Resources, SEA M08-03.	Located off the coast of Manatee & Sarasota Counties, Florida on the Federal OCS of the Gulf of Mexico.	7/17/2008
Post, Buckley, Schuh and Jernigan, Geological & Geophysical Exploration for Mineral Resources, SEA E-8-01.	Located off the coast of St. Johns County, Florida on the Federal OCS of the Atlantic.	7/18/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 06-033B.	Eugene Island, Block 365, Lease OCS-G 13628, located 76 miles from the Louisiana.	7/21/2008
W & T Offshore, Inc., Structure Removal, SEA ES/SR 08-127	Eugene Island, Block 45, Lease OCS-G 19785, located 17 miles from the nearest Louisiana shoreline.	7/22/2008
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 08-125.	Ship Shoal, Block 154, Lease OCS-G 00420, located 36 miles from the nearest Louisiana shoreline.	7/22/2008
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 08-126.	Ship Shoal, Block 154, Lease OCS-G 00420, located 36 miles from the nearest Louisiana shoreline.	7/22/2008
Seneca Resources Corporation, Structure Removal, SEA ES/SR 08-124.	West Cameron, Block 182, Lease OCS-G 15062, located 30 miles from the nearest Louisiana shoreline.	7/22/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 08-005.	Eugene Island, Block 305, Lease OCS-G 02108, located 58 miles from the nearest Louisiana shoreline.	7/23/2008
Maritech Resources, Inc., Structure Removal, SEA ES/SR 08-006A.	Ship Shoal, Block 291, Lease OCS-G 02923, located 58 miles from the nearest Louisiana shoreline.	7/23/2008
W & T Offshore, Structure Removal, SEA ES/SR 01-050A	Eugene Island, Block 118, Lease OCS-G 15242, located 20 miles from the nearest Louisiana shoreline.	7/24/2008
TGS-NOPEC Geophysical Company, Geological & Geophysical Exploration for Mineral Resources, SEA M08-04.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	7/24/2008
GOM Shelf, LLC, Structure Removal, SEA ES/SR 07-086	Main Pass, Block 296, Lease OCS-G 01673, located 23 miles from the nearest Louisiana shoreline.	7/24/2008
Stone Energy Corporation, Structure Removal, SEA ES/SR 08-120, 08-121, 08-122, 08-123.	South Marsh Island, Block 275, Lease OCS-G 05477, located 29 to 32 miles from the nearest Louisiana shoreline.	7/24/2008
Energy Partners, LTD, Structure Removal, SEA ES/SR 08-138	East Cameron, Block 263, Lease OCS-G 15147, located 88 miles from the nearest Louisiana shoreline.	7/28/2008

Activity/operator	Location	Date
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08-131 ..	Matagorda Island, Block A-4, Lease OCS-G 06059, located 35 miles from the nearest Texas shoreline.	7/28/2008
Energy Partners, LTD, Structure Removal, SEA ES/SR 08-137	East Cameron, Block 44, Lease OCS-G 19730, located 15 miles from the nearest Louisiana shoreline.	7/29/2008
Beryl Oil and Gas LP, Structure Removal, SEA ES/SR 08-098	West Delta, Block 57, Lease OCS-G 10878, located 3 miles from the nearest Louisiana shoreline.	7/30/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 08-135, 08-136.	South Timbalier, Block 51, Lease OCS-G 01240, located 11 miles from the nearest Louisiana shoreline.	8/15/2008
EI Paso E&P Company, L.P., Initial Exploration Plan, SEA N-9209.	High Island, Block A-373, Lease OCS-G 25606, located 120 miles from the nearest Texas shoreline.	8/18/2008
GOM Shelf LLC, Structure Removal, SEA ES/SR 08-013	South Pass, Block 45, Lease OCS-G 04479, located 7 miles from the nearest Louisiana shoreline.	8/19/2008
Mariner Energy, Inc., Structure Removal, SEA ES/SR 08-141 ..	Brazos, Block A104, Lease OCS-G 11297, located 35 miles from the nearest Texas shoreline.	8/22/2008
Apache Corporation, Structure Removal, SEA ES/SR 07-068B	Main Pass, Block 151, Lease OCS-G 02951, located 10 miles from the nearest Louisiana shoreline.	8/22/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08-110.	Matagorda Island, Block 672, Lease OCS-G 10198, located 25 miles from the nearest Texas shoreline.	8/22/2008
Beryl Oil & Gas LP, Structure Removal, SEA ES/SR 08-128	Chandeleur, Block 38, Lease OCS-G 07836, located 33 miles from the nearest Louisiana shoreline.	8/27/2008
Stone Energy Corporation, Structure Removal, SEA ES/SR 08-133.	South Marsh Island, Block 275, Lease OCS-G 05477, located 29 miles from the nearest Louisiana shoreline.	8/27/2008
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 08-144.	Breton Sound, Block 54, Lease OCS-G 21706, located 10 miles from the nearest Louisiana shoreline.	8/28/2008
Merit Energy Company, Structure Removal, SEA ES/SR 08-114.	Matagorda Island, Block 682, Lease OCS-G 05171, located 20 miles from the nearest Texas shoreline.	9/11/2008
Chevron U.S.A., Inc., Structure Removal, SEA ES/SR 07-039B	Eugene Island, Block 231, Lease OCS-G 00980, located 39 miles from the nearest Louisiana shoreline.	9/19/2008
Prime Offshore, LLC, Structure Removal, SEA ES/SR 08-145	North Padre Island, Block 998, Lease OCS-G 23123, located 20 miles from the nearest Texas shoreline.	9/19/2008
Eni U.S. Operating Company, Inc., Structure Removal, SEA ES/SR 08-148.	Ship Shoal (South Addition), Block 246, Lease OCS-G 01027, located 55 miles from the nearest Louisiana shoreline.	9/19/2008
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 08-143.	Vermilion, Block 28, Lease OCS-G 21588, located 4.8 miles from the nearest Louisiana shoreline.	9/19/2008
CGG Veritas, Geological & Geophysical Prospecting for Mineral Resources, SEA L08-71.	Located in the central Gulf of Mexico south of Fourchon, Louisiana.	9/22/2008
Hunt Petroleum (AEC), Inc., Structure Removal, SEA ES/SR 08-149.	Main Pass, Block 101, Lease OCS-G 22792, located 20 miles from the nearest Louisiana shoreline.	9/26/2008
Union Oil Company of California, Structure Removal, SEA ES/SR 08-107.	Ship Shoal, Block 209, Lease OCS-G 00827, located 34 miles from the nearest Louisiana Shoreline.	9/26/2008

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSI's prepared by the Gulf of Mexico OCS Region are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: October 10, 2008.

Lars Herbst,

Regional Director, Gulf of Mexico OCS Region.
[FR Doc. E8-29535 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for the Draft Elk Management Plan and Environmental Impact Statement for Theodore Roosevelt National Park, ND

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) announces

the availability of a draft Elk Management Plan (Plan) and Environmental Impact Statement (EIS) for Theodore Roosevelt National Park, North Dakota (Park).

DATES: The draft EIS will remain available for public review for 90 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency. Public meetings will be held during the 90-day review period, but the specific dates and locations will be announced in local and regional media sources of record and on the Park's Web site.

You may submit your comments by any one of several methods. You may comment via the Internet through the NPS Planning, Environment, and Public Comment Web site (<http://parkplanning.nps.gov/thro>) and simply click on the link to the Plan. You may mail comments to Superintendent Valerie Naylor at the address provided below. You may send comments to the Superintendent by facsimile at 701-623-4840. Finally, you may hand-

deliver comments to the Park headquarters.

ADDRESSES: Copies of the draft EIS are available from the Superintendent, Theodore Roosevelt National Park, Box 7, Medora, North Dakota 58645-0007.

SUPPLEMENTARY INFORMATION: The purpose of this EIS is to develop and implement an elk management strategy compatible with the long-term protection and preservation of park resources. This EIS is needed to address the rapid increase of the Park elk population from the 47 reintroduced to the South Unit of the Park in 1985, to the approximately 900 that occur there today. Larger populations of elk could, over the long-term, negatively affect plant communities and other resources as a result of overgrazing. Large elk populations could also negatively affect other herbivores present in the South Unit by competing for forage. Other considerations include land use and users outside the Park, including livestock grazing, hunting, and agriculture; visitors to the Park; and the

ability of the Park to effectively manage resources.

The alternatives under consideration include a required "no-action" alternative plus five action alternatives. An alternative that addresses herd maintenance only is included as one of the action alternatives. These alternatives were developed by an interdisciplinary planning team and through feedback from the public, other Agencies, and the scientific community during the planning process.

- Under alternative A (no action), existing management practices would be followed and no new management actions would be implemented beyond those available when the elk management planning process started. This would be limited to vegetation monitoring in elk use areas of the South Unit, as well as monitoring of the elk population.

- Under alternative B, direct reduction with firearms would be used to reduce and maintain elk numbers consistent with the protection of the lightly-grazed system in the South Unit.

- Under alternative C, the elk herd would be reduced and maintained using roundups and euthanasia at either offsite locations or the Park's handling facility.

- Under alternative D, the NPS would seek to reduce and maintain the elk population using translocation (roundup and relocation of animals to willing recipients outside the Park).

- Under alternative E, the NPS would look to increase hunting opportunities outside the park, coordinated with State actions to reduce and maintain the elk population in the Park.

- Under alternative F (maintenance only), the elk herd would initially be reduced using one of the other action alternatives, and then maintained by treating female elk with chemical fertility control agents to maintain the target elk population size. At this time, there are no fertility control agents that meet NPS criteria for use. However, ongoing research in other NPS units has indicated that use of such an agent at Theodore Roosevelt National Park could be feasible during the life of this plan.

FOR FURTHER INFORMATION CONTACT:

Contact Superintendent Naylor at the address above or by telephone at 701-623-4466.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time.

While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 4, 2008.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E8-29593 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Chickamauga and Chattanooga National Military Park in Tennessee and Georgia

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-Making) the NPS is preparing an EIS for a GMP for Chickamauga and Chattanooga National Military Park, located in Tennessee and Georgia.

The GMP will prescribe the desired resource conditions and visitor experience opportunities that are to be achieved and maintained in the park over approximately the next 15 to 20 years. The park's purpose, significance, special mandates, and relevant laws and policies directing park management will be reviewed and assessed to establish the foundation for the GMP. The GMP will build upon these foundation elements to determine the appropriate type, level and location for resource management activities, visitor use, and potential development. In consultation with the park's stakeholders (i.e., government agencies, affiliated tribal representatives, partnership organizations, and other concerned members of the public), issues bearing on the long-term management of the park will be factored into the development of a reasonable range of management alternatives. The resource impacts and other anticipated consequences of implementing the planning alternatives will be assessed in the EIS.

From initial discussions among NPS planners, park staff and partners, issues that are anticipated to be addressed by the GMP will include (but are not limited to) the following: Long-term management of the battlefield landscape to achieve objectives for restoring historic viewsheds and protecting

important cultural and natural resources; articulation of resource stewardship and visitor management prescriptions for the recently acquired Moccasin Bend National Archeological District; determination of a range of appropriate and compatible visitor activities in the park; and, identification of opportunities for collaboration and partnership with community leaders and other entities to ensure park values are understood and considered in local decision making (e.g., viewshed protection and adjacent land-use).

DATES: Any comments on the scope of issues to be addressed in the GMP should be submitted no later than 30 days after public meetings. Public scoping meetings regarding the GMP will be held to allow an opportunity for stakeholders and other members of the public to bring issues and other concerns to the attention of the NPS planning team. Government-to-government meetings with tribal representatives will also be held. Specific dates, times, and locations will be made available in the local media, on the NPS Planning, Environment and Public Comment (PEPC) Web site (<http://parkplanning.nps.gov/chch>), or by contacting the Superintendent of Chickamauga and Chattanooga National Military Park.

ADDRESSES: Information on the planning process and copies of newsletters will be available from the office of the Superintendent, Chickamauga and Chattanooga National Military Park, P.O. Box 2128, Fort Oglethorpe, GA 30742.

SUPPLEMENTARY INFORMATION: Public and agency involvement will be solicited at several key steps in the planning process including initial scoping, alternatives development, and the draft plan. If you wish to comment on any issues associated with the GMP, you may submit your concerns to the planning team by any of several methods. You may mail comments to Chickamauga and Chattanooga National Military Park, P.O. Box 2128, Fort Oglethorpe, Georgia 30742. You may comment electronically at <http://parkplanning.nps.gov/chch>. You may also hand-deliver comments to park headquarters located at 3370 LaFayette Road, Fort Oglethorpe, Georgia. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your

personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT:

Superintendent Shawn Bengé, Chickamauga and Chattanooga National Military Park, P.O. Box 2128, Fort Oglethorpe, GA 30742; phone: (423) 752-5213. The responsible official for this EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

Dated: November 3, 2008.

David Vela,

Regional Director, Southeast Region, National Park Service.

[FR Doc. E8-29520 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Final General Management Plan/Wilderness Study/Environmental Impact Statement for Sleeping Bear Dunes National Lakeshore, MI

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Final General Management Plan/Wilderness Study/Environmental Impact Statement for Sleeping Bear Dunes National Lakeshore, MI.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Final General Management Plan/Wilderness Study/Environmental Impact Statement (GMP/WS/EIS) for Sleeping Bear Dunes National Lakeshore (Lakeshore), Michigan.

DATES: The final GMP/WS/EIS will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Requests for copies of the Final GMP/WS/EIS should be sent to the Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630-9797. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment Web site (<http://parkplanning.nps.gov>); simply click on the link to the Lakeshore.

SUPPLEMENTARY INFORMATION: The NPS prepared a draft GMP/WS/EIS for the Lakeshore, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, combining the plan, wilderness study, and an environmental analysis of both. The GMP provides a framework for making decisions about and managing the national lakeshore's resources and visitor use for the next 15-20 years. The WS produces a wilderness proposal that will be submitted to the NPS Director for approval and subsequently considered by the Department of the Interior, President, and Congress.

The draft was made available for public review for 69 days, from April 7, 2008 to June 15, 2008. During that time, the NPS distributed over 700 copies of the draft. Sixteen presentations on the contents of the draft were made upon request to various groups during the comment period, with a total of 363 persons in attendance. The draft was also made available at the park offices, on the Internet, and at area libraries. Public hearings were held on June 3, 4, and 5, 2008, attended by a total of 196 persons. Comments were received from 292 persons on the document during the public review period. Comments from individuals, groups, and public agencies on the alternatives, the preferred alternative, and the environmentally preferred alternative were considered.

The preferred alternative will provide for the preservation of natural resources, while offering opportunities for visitor enjoyment of natural, cultural, and recreational resources in a scenic outdoor setting.

FOR FURTHER INFORMATION CONTACT:

Contact Superintendent Shultz, Sleeping Bear Dunes National Lakeshore, at the address or telephone number above.

Dated: September 26, 2008.

Ernest Quintana,

Director, Midwest Region.

[FR Doc. E8-29514 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-HH-P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the White-tailed Deer Management Plan, Catoctin Mountain Park, MD

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the White-tailed Deer Management

Plan, Catoctin Mountain Park, Maryland.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement for the White-tailed Deer Management Plan (FEIS) for Catoctin Mountain Park in Thurmont, Maryland. The plan will support forest regeneration and provide for long-term protection, conservation, and restoration of native species and cultural landscapes at Catoctin Mountain Park. The document describes four management alternatives which include a no action alternative (continue existing management) and three action alternatives, one of which was identified as the preferred alternative.

DATES: The Draft Environmental Impact Statement for the White-tailed Deer Management Plan was on public review from December 1, 2006, through February 2, 2007. Responses to public comments received during that review are addressed in the FEIS. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS. After the 30-day no-action period, a Record of Decision will be signed that will document NPS approval of the FEIS and identify the selected alternative for implementation.

ADDRESSES: The FEIS will be available for public review online at the National Park Service Planning, Environment and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/cato> by selecting "Deer Management Plan for Catoctin Mountain Park." Bound copies of the FEIS will also be available at the Catoctin Mountain Park Visitor Center which is located at the intersection of Maryland Route 77 and Park Central Road, and at Catoctin Mountain Park Headquarters which is located approximately two miles west of Thurmont on Maryland Route 77. Copies will also be available at the C. Burr Artz Public Library, 110 East Patrick Street, Frederick, Maryland 21701; the Thurmont Regional Library, 76 East Moser Road, Thurmont, Maryland 21788; the Washington County Free Library, 100 South Potomac Street, Hagerstown, Maryland 21740; and the Smithsburg Library, 66 West Water Street, Smithsburg, Maryland 21783.

FOR FURTHER INFORMATION CONTACT: Becky Loncosky, Park Biologist, at Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788, by

telephone at (301) 416-0536, or by e-mail at Becky_Loncosky@nps.gov.

SUPPLEMENTARY INFORMATION: The FEIS evaluates four alternatives for managing white-tailed deer in the park. The document describes and analyzes the environmental impacts of the no-action alternative and three action alternatives. When approved, the plan will guide deer management actions in Catoctin Mountain Park over the next 15 years.

Alternative A (no action) would continue the existing deer management plan of limited fencing, use of repellents in landscaped areas, monitoring, data management, and research; no new deer management actions would be implemented. Alternative B would combine several non-lethal actions including large-scale exclosures (fencing), additional use of repellents in limited areas, and reproductive control of does to gradually reduce deer population in the park. Under Alternative C qualified federal employees or contractors would directly reduce the deer population in the park through sharpshooting. Capture and euthanasia of individual deer would be used in circumstances where sharpshooting would not be appropriate. Alternative C is the NPS preferred alternative. Alternative D would combine actions of Alternatives B and C which would include sharpshooting, capture and euthanasia, and reproductive control of does to maintain population levels. The preferred alternative would fully meet the plan objectives and has more certainty of success than the other alternatives analyzed. The relatively rapid reduction in deer density and browsing pressure on native plant communities and species of special concern would provide beneficial impacts to the natural and cultural resources of the park.

Dated: August 13, 2008.

Lisa A. Mendelson-Ielmini,
Acting Regional Director, National Capital Region.

Editorial Note: This document was received in the Office of the Federal Register on December 9, 2008.

[FR Doc. E8-29513 Filed 12-12-08; 8:45 am]

BILLING CODE 4312-59-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029-0035 and 1029-0038

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek continued approval for two collections of information which we are consolidating into one collection activity: 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

DATES: Comments on the proposed information collection must be received by February 13, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202-SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease, at (202) 208-2783 or by e-mail at the location listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications Minimum Requirements for Information on Environmental Resources. OSM is combining the two collections and will request that the collections be consolidated under OMB control number 1029-0035, eliminating 1029-0038.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents.

OSM will request a 3-year term of approval for this information collection activity.

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

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Parts 779 and 783—Surface and Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OMB Control Number: 1029-0035.

Summary: Applicants for surface and underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once, at time of application submission.

Description of Respondents: 314 Surface and underground coal mining applicants and 24 State regulatory authorities.

Total Annual Responses: 314 Coal mining applicants and 309 State responses.

Total Annual Burden Hours: 52,101 hours.

Dated: December 4, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8-29481 Filed 12-12-08; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-63,805]

**International Paper Company,
Pensacola Mill, Cantonment, FL;
Notice of Affirmative Determination
Regarding Application for
Reconsideration**

By applications dated October 29, 2008, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on September 26, 2008 and published in the **Federal Register** on October 8, 2008 (73 FR 58982).

The initial investigation resulted in a negative determination based on the finding that criteria I.A and II.A have not been met. The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner provided additional information regarding employment and layoffs at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC this 3rd day of December 2008.

Elliott S. Kushner,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E8-29612 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-63,730; TA-W-63,730A]

**Chesapeake Hardwood Products, Inc.,
Chesapeake, VA, Including an
Employee in Support of Chesapeake
Hardwood Products, Inc., Chesapeake,
VA, Located in San Antonio, TX;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 12, 2008, applicable to workers of Chesapeake Hardwood Products, Inc., Chesapeake, Virginia. The notice was published in the **Federal Register** on May 15, 2008 (72 FR 28169-28170). The notice was published in the **Federal Register** on September 24, 2008 (73 FR 55136).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hardwood panels used in cabinetry and furniture.

New information shows that a worker separation has occurred involving an employee (Mr. Wayne Noll) located in San Antonio, Texas, in support of and under the control of Chesapeake Hardwood Products, Inc., Chesapeake, Virginia.

Based on these findings, the Department is amending this certification to include an employee in support of the Chesapeake, Virginia location of the subject firm located in San Antonio, Texas.

The intent of the Department's certification is to include all workers employed at Chesapeake Hardwood Products, Inc., Chesapeake, Virginia who were adversely impacted by increased imports of hardwood panels used in cabinetry and furniture.

The amended notice applicable to TA-W-63,730 is hereby issued as follows:

All workers of Chesapeake Hardwood Products, Inc., Chesapeake, Virginia (TA-W-63,730), including an employee in support of Chesapeake Hardwood Products, Inc., Chesapeake, Virginia, located in San Antonio, Texas (TA-W-63,730A), who became totally or partially separated from

employment on or after July 18, 2007, through September 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 4th day of December 2008.

Richard Church,*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E8-29611 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-63,344]

**General Motors Corporation, Moraine
Assembly Plant, Vehicle Manufacturing
Division, Including On-Site Leased
Workers from Allied Systems, LTD,
Moraine, Ohio; Amended Certification
Regarding Eligibility to Apply for
Worker Adjustment Assistance and
Alternative Trade Adjustment
Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 5, 2008, applicable to workers of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, Moraine, Ohio. The notice was published in the **Federal Register** on June 20, 2008 (73 FR 35164).

At the request of the International Brotherhood of Teamsters, Local 957, the Department reviewed the certification for workers of the subject firm. The workers assemble Buick Rainiers, Chevrolet TrailBlazers, GMC Envoys, Isuzu Ascenders and Saab 9-7Xs.

New information shows that workers leased from Allied Systems, LTD were employed on-site at the Moraine, Ohio location of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Allied Systems, LTD working on-

site at the Moraine Assembly Plant, Vehicle Manufacturing Division, Moraine, Ohio location of the subject firm.

The amended notice applicable to TA-W-63,344 is hereby issued as follows:

“All workers of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, including on-site leased workers from Allied Systems, LTD, Moraine, Ohio, who became totally or partially separated from employment on or after June 17, 2008, through June 5, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.”

Signed at Washington, DC, this 4th day of December 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29610 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63,939]

Hewlett Packard, Inkjet And Web Solutions Division, Including On-Site Leased Workers from Cable Consultants, d/b/a Black Box Network Services, Corvallis, Oregon; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 19, 2008, applicable to workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA and Volt, Corvallis, Oregon. The notice was published in the **Federal Register** on October 3, 2008 (73 FR 57682).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of inkjet supplies, particularly in jet printer cartridge heads.

New information shows that workers leased from Cable Consultants, Inc., d/

b/a Black Box Network Services were employed on-site at the Corvallis, Oregon, location of Hewlett Packard, Inkjet and Web Solutions Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Cable Consultants, Inc., d/b/a Black Box Network Services working on-site at the Inkjet and Web Solutions Division, Corvallis, Oregon, location of the subject firm.

The amended notice applicable to TA-W-63,939 is hereby issued as follows:

“All workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA, Volt, and Cable Consultants, d/b/a Black Box Network Services, Corvallis, Oregon, engaged in the production of inkjet supplies, who became totally or partially separated from employment on or after August 26, 2007, through September 19, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.”

Signed at Washington, DC, this 4th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29613 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,932]

Keeper Corporation, Including On-Site Leased Workers of AAA Staffing, North Windham, CT; Including Employees in Support of Keeper Corporation, North Windham, CT Working in the Following Locations: TA-W-62,932B, Lawrenceville, GA; TA-W-62,932C, Smyrna, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and

Alternative Trade Adjustment Assistance on March 13, 2008, applicable to workers of Keeper Corporation, including on-site leased workers of AAA Staffing, North Windham, Connecticut. The notice was published in the **Federal Register** on March 26, 2008 (73 FR 16064).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cargo control products such as tie downs, towing straps and bungee cords.

New information shows that worker separations have occurred involving employees in support of the North Windham, Connecticut facility of Keeper Corporation working out of Lawrenceville, Georgia and Smyrna, Tennessee. Ms. J. Ginger Paige and Mr. Dan Watson provided sales functions supporting the production of cargo control products such as tie downs, towing straps and bungee cords at the North Windham, Connecticut location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the North Windham, Connecticut facility of Keeper Corporation working out of Lawrenceville, Georgia and Smyrna, Tennessee.

The intent of the Department's certification is to include all workers of Keeper Corporation, North Windham, Connecticut who were adversely affected by a shift in production of cargo control products such as tie downs, towing straps and bungee cords to China.

The amended notice applicable to TA-W-62,932 is hereby issued as follows:

All workers of Keeper Corporation, including on-site leased workers of AAA Staffing, North Windham, Connecticut (TA-W-62,932), all workers of Keeper Corporation, Manchester, Connecticut (TA-W-62,932A), including employees in support of Keeper Corporation, North Windham, Connecticut working out of Lawrenceville, Georgia (TA-W-62,932B) and Smyrna, Tennessee (TA-W-62,932C), who became totally or partially separated from employment on or after February 28, 2007, through March 13, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 4th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29609 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than December 26, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of December 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 11/17/08 and 11/21/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64441	Decea Classic Upholstery (Wkrs)	High Point, NC	11/17/08	11/14/08
64442	Ranal, Inc. (Wkrs)	Auburn Hills, MI	11/17/08	11/13/08
64443	Atlantic Durant Technology, Inc. (Wkrs)	Harlingen, TX	11/17/08	11/14/08
64444	International Paper (State)	Albany, OR	11/17/08	10/17/08
64445	Stella Starr (Wkrs)	South San Francisco, CA	11/17/08	11/13/08
64446	Doutt Tool (Wkrs)	Vanango, PA	11/17/08	11/14/08
64447	Vibracoustic North America (Comp)	Ligonier, IN	11/17/08	11/13/08
64448	Scott Curtis Construction Co., Inc. (Comp)	Granite Falls, NC	11/17/08	11/12/08
64449	Whirlpool Jackson Dishwashing Products (Comp)	Jackson, TN	11/17/08	11/14/08
64450	Weather Shield Manufacturing, Inc (Wkrs)	Medford, WI	11/17/08	11/14/08
64451	Open Solutions (State)	San Leandro, CA	11/17/08	10/30/08
64452	Kensington Windows, Inc. (IUE)	Vandergrift, PA	11/17/08	11/14/08
64453	ThyssenKrupp Crankshaft Co (UAW)	Fostoria, OH	11/17/08	11/05/08
64454	Alcatel-Lucent (Comp)	Charlotte, NC	11/18/08	11/17/08
64455	Ideal (Comp)	St. Augustine, FL	11/18/08	11/17/08
64456	ILPea, Inc. (State)	Fort Smith, AR	11/18/08	11/17/08
64457	Xerox Corp. (UNITE)	Oklahoma City, OK	11/18/08	11/17/08
64458	Continental Structural Plastics (UAW)	North Baltimore, OH	11/18/08	11/11/08
64459	Entegris Corp. (State)	Chaska, MN	11/18/08	11/17/08
64460	Standard Thomson Corp (IUE)	Waltham, MA	11/18/08	11/13/08
64461	Chrysler Corp (UAW)	Newark, DE	11/18/08	11/17/08
64462	Foamex (Wkrs)	Corry, PA	11/18/08	11/13/08
64463	Alltrista Plastics, LLC (Comp)	Fort Smith, AR	11/18/08	11/18/08
64464	Times Fiber Communications (Comp)	Liberty, NC	11/18/08	11/15/08
64465	Eldorado Cap, Co. (Wkrs)	Eldorado, IL	11/18/08	11/07/08
64466	Mt. Pleasant Hosiery (Comp)	Mt. Pleasant, NC	11/18/08	11/12/08
64467	Piramal/Gujarati Glass (Wkrs)	Park Hills, MO	11/19/08	11/17/08
64468	MRV Communication (Comp)	Littleton, MA	11/19/08	11/17/08
64469	Avail Medical Products (Wkrs)	Bellefonte, PA	11/19/08	11/07/08
64470	TDS/Syncreon Automotive (Wkrs)	Chicago, IL	11/19/08	11/10/08
64471	Lorentson Manufacturing Co, Inc. (Wkrs)	Kokomo, IN	11/19/08	11/12/08
64472	Hyosung USA, Inc. (UFCW)	Decatur, AL	11/19/08	11/18/08
64473	Magnolia Garment Corporation (Wkrs)	Tylertown, MS	11/19/08	11/11/08
64474	Dale Medical Products, Inc. (Comp)	Plainville, MA	11/19/08	11/14/08
64475	Citation Corp (Comp)	Lufkin, TX	11/19/08	11/10/08
64476	Iowa Precision Industries (Wkrs)	Cedar Rapids, IA	11/19/08	11/13/08
64477	Engineered Machined Products (Union)	Escanaba, MI	11/20/08	11/14/08
64478	Broyhill Furniture Industries, Inc. (Comp)	Lenoir, NC	11/20/08	11/18/08
64479	Pardon, Inc. (Wkrs)	Gladstone, MI	11/20/08	11/13/08
64480	Block Corporation (Wkrs)	Tupelo, MS	11/20/08	11/17/08
64481	Covalence Specialty Materials, LLC (Comp)	Albertville, AL	11/20/08	11/19/08
64482	SPX-APV (Union)	Lake Mills, WI	11/20/08	11/18/08
64483	Fisher and Company, Inc. (Comp)	St. Clair Shores, MI	11/20/08	11/19/08
64484	The Lang Companies (Wkrs)	Delafield, WI	11/20/08	11/19/08

APPENDIX—Continued

[TAA Petitions Instituted Between 11/17/08 and 11/21/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64485	Traeger Pellet Grills, LLC (Wkrs)	Wilsonville, OR	11/20/08	11/17/08
64486	Motor City Mold, Inc. (State)	Plymouth, MI	11/20/08	11/03/08
64487	Advanced Urethane Technologies (USW)	Dubuque, IA	11/20/08	11/19/08
64488	Invensys Appliance Controls (Wkrs)	Holland, MI	11/20/08	11/17/08
64489	Wyeth Pharmaceuticals (Comp)	Rouses Point, NY	11/20/08	11/19/08
64490	ITW Impro (Wkrs)	Peotone, IL	11/20/08	11/18/08
64491	Carbone Kirkwood, LLC (Comp)	Farmville, VA	11/21/08	11/13/08
64492	GTP Greenville, Inc. (Comp)	Greenville, SC	11/21/08	11/04/08
64493	Floturn, Inc. (Comp)	Fairfield, OH	11/21/08	11/20/08
64494	Indian Transmission Plant 1 (UAW)	Kokomo, IN	11/21/08	11/14/08
64495	Wilens Manufacturing Co. (UNITE)	Atlanta, GA	11/21/08	11/18/08
64496	Hatteres Yachts (Wkrs)	New Bern, NC	11/21/08	11/20/08
64497	United Airlines (Union)	Portland, OR	11/21/08	11/18/08
64498	Jones Plastic and Engineer Co., LLC (Comp)	Jeffersonton, KY	11/21/08	11/20/08
64499	Whirlpool Corporation (State)	Benton Harbor, MI	11/21/08	11/03/08
64500	Fortune Swimwear LLC (Wkrs)	New York, NY	11/21/08	11/20/08
64501	Masterbrand Cabinets (Union)	Richmond, IN	11/21/08	10/26/08
64502	Ashley Furniture (Wkrs)	Ecrú, MS	11/21/08	11/12/08
64503	Corning Cable Systems (Wkrs)	Hickory, NC	11/21/08	11/20/08
64504	Canac Company (State)	Statesville, NC	11/21/08	11/19/08
64505	Saunders Bros (Wkrs)	Fryeburg, ME	11/21/08	11/20/08
64506	International Paper (Wkrs)	Valliant, OK	11/21/08	11/14/08
64507	Columbia Forest Products (Comp)	Klamath Falls, OR	11/21/08	11/18/08
64508	Liberty Miami Distribution Center (Wkrs)	Miami, FL	11/21/08	10/31/08
64509	Interlec Systems (Wkrs)	Bardstown, KY	11/21/08	11/10/08
64510	Ford Motor Company (Comp)	Chicago, IL	11/21/08	11/20/08
64511	Manna Tech Inc. (Wkrs)	Coppell, TX	11/21/08	11/21/08

[FR Doc. E8-29607 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training
AdministrationInvestigations Regarding Certifications
of Eligibility To Apply for Worker
Adjustment Assistance and Alternative
Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2008.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of December 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

Appendix

TAA PETITIONS INSTITUTED BETWEEN 11/24/08 AND 11/28/08

TA-W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
64512	United Airlines (IBT)	Elk Grove Village, IL	11/24/08	11/16/08
64513	Signa Group, Inc. (Comp)	Ludington, MI	11/24/08	11/17/08
64514	El Paso Chile Company (Comp)	El Paso, TX	11/24/08	11/21/08
64515	Perry Manufacturing (Comp)	El Dorado Springs, MO	11/24/08	11/20/08
64516	JDS Uniphase Corporation (Wkrs)	San Jose, CA	11/24/08	11/13/08
64517	DeRoyal Industries (Wkrs)	San Luis Obispo, CA	11/24/08	11/13/08
64518	Hendrickson USA, LLC (Comp)	Lugoff, SC	11/24/08	11/19/08
64519	Hitachi Metals Automotive Components USA, LLC (Comp).	Lawrenceville, PA	11/24/08	11/21/08
64520	Bowen of Cleveland (Wkrs)	Cleveland, OH	11/24/08	11/21/08

TAA PETITIONS INSTITUTED BETWEEN 11/24/08 AND 11/28/08—Continued

TA-W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
64521	Goodrich Aerostructures (IAMAW)	Chula Vista, CA	11/24/08	11/06/08
64522	American Axle and Manufacturing, Inc. (State).	Detroit, MI	11/24/08	11/21/08
64523	Kautex-Textron (Union)	Wilmington, OH	11/24/08	11/21/08
64524	United Airlines, Inc. (Union)	Sterling, VA	11/24/08	11/19/08
64525	Stamford Industrial Group (Wkrs)	Warren, OH	11/24/08	11/13/08
64526	North American Lighting (Corporate Office) (State).	Paris, IL	11/24/08	11/21/08
64527	LA-Z-BOY, Inc. of Arkansas (State)	Siloam Springs, AR	11/25/08	11/24/08
64528	Fuji Photo Film, Inc. (Wkrs)	Greenwood, SC	11/25/08	11/24/08
64529	Broyhill Plant #3 (Wkrs)	Lenoir, NC	11/25/08	11/17/08
64530	Fujimi Corporation (Comp)	Tualatin, OR	11/25/08	11/24/08
64531	Beacon Looms, Inc. (Wkrs)	Teaneck, NJ	11/25/08	11/17/08
64532	F.L. Smithe Machine Company (IAAW)	Duncansville, PA	11/25/08	11/15/08
64533	Racine Stamping Corporation (Comp)	Racine, WI	11/25/08	11/19/08
64534	Siemens Energy and Automation, Inc. (Comp).	El Paso, TX	11/25/08	11/19/08
64535	Tricon Timber, LLC (Comp)	St. Regis, MT	11/25/08	11/24/08
64536	Industrial Paint and Strip, Inc. (Comp)	Woodsfield, OH	11/25/08	11/18/08
64537	Mitel (Wkrs)	Chandler, AZ	11/25/08	11/24/08
64538	Meadville Forging Company (Wkrs)	Meadville, PA	11/25/08	11/24/08
64539	Nu-Mode Manufacturing Co., Inc. (Comp)	Taylorsville, NC	11/26/08	11/25/08
64540	Hancock and Moore, Inc. (Wkrs)	Hickory, NC	11/26/08	11/25/08
64541	North Douglas Wood Products, Inc. (Comp) ..	Drain, OR	11/26/08	10/30/08
64542	Mannatech, Inc. (Wkrs)	Coppell, TX	11/26/08	11/21/08
64543	E. R. Wagner Manufacturing Company (Wkrs).	Milwaukee, WI	11/26/08	11/24/08
64544	Source Provides, Inc. (comprehensive logistic) (UAW).	Lansing, MI	11/26/08	11/24/08
64545	Sanmina SCI (Wkrs)	Turtle Lake, WI	11/26/08	11/18/08
64546	Hightower Technology Capital, Inc. (Comp) ..	San Diego, CA	11/26/08	11/25/08
64547	GKN Sinter Metals/St. Marys Plant (Wkrs)	Kersey, PA	11/26/08	11/14/08
64548	Stuart Flooring Corporation (Comp)	Stuart, VA	11/26/08	11/21/08
64549	Bosal Industries (Comp)	Lavonia, GA	11/26/08	11/17/08
64550	Chrysler Trenton Engine Plant (UAW)	Port Huron, MI	11/28/08	11/26/08
64551	United Airlines/O'Hare Maintenance (Wkrs) ...	Chicago, IL	11/28/08	11/25/08
64552	Bos Automotive (Wkrs)	Morristown, TN	11/28/08	11/17/08
64553	Springs Creative Products Group (Comp)	Rock Hall, SC	11/28/08	11/26/08
64554	Winchester Electronics Corporation (State) ...	Wallingford, CT	11/28/08	11/26/08
64555	Blair Mills, LLC (Comp)	Belton, SC	11/28/08	11/11/08
64556	Woodhead L.P. (Wkrs)	El Paso, TX	11/28/08	11/26/08
64557	Ontario Die Company of America (Comp)	Port Huron, MI	11/28/08	11/24/08

[FR Doc. E8-29608 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training
Administration

[TA-W-64,023]

**CBC Latrobe Acquisition, LLC, a
Subsidiary of City Brewery Company,
LLC, Latrobe, PA; Notice of Negative
Determination Regarding Application
for Reconsideration**

By application dated November 19, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to

workers and former workers of the subject firm. The denial notice was signed on October 21, 2008 and published in the **Federal Register** on November 10, 2008 (73 FR 66677).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination was based on the finding that imports of beer did not contribute importantly to worker

separations at the subject facility and there was no shift of production to a foreign country. The subject firm did not import beer during the relevant period. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's declining domestic customers. A survey conducted by the Department of Labor revealed that a major customer did not purchase imported beer in 2006, 2007 and during January through August 2008.

The petitioner provided a citation from the 2007 shareholder report that "competitiveness with foreign product on the shelves of distributors has increased" and stated that the workers of the subject firm should be eligible for TAA because domestic production has been "disrupted" by foreign products.

The investigation revealed no imports of beer during the relevant period and

no shift of production to a foreign source. Upon further review of the initial investigation, it was revealed that sales and production at the subject facility have increased in the relevant period. The subject firm was anticipating a temporary shutdown at the end of 2008 due to problems with equipment. Therefore, the initial determination document should have also stated that criteria (a)(2)(A)(I.B) and (a)(2)(B)(II.B) have not been met. Sales and production of the subject firm increased and there was no shift in production to a foreign country in the relevant period.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC this 5th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29614 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,133]

Cencorp, LLC, Longmont, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 17, 2008, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on October 23, 2008, and published in the **Federal**

Register on November 10, 2008 (73 FR 66677).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Cencorp, LLC, Longmont, Colorado, was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner stated that workers of the subject firm were previously certified eligible for Trade Adjustment Assistance. The petitioner further stated that in order to reveal the import impact, the Department should consider the time period and events which were considered in the 2006 investigation. The petitioner appears to allege that because the subject firm was previously certified eligible for TAA, the workers of the subject firm should be granted another TAA certification.

When assessing eligibility for TAA, the Department exclusively considers production during the relevant time period (from one year prior to the date of the petition). Therefore, events occurring in 2006 are outside of the relevant period and are not relevant in this investigation.

The investigation revealed that workers of the subject firm were engaged in field support services for the foreign production of depaneling equipment during the relevant period. Specifically, the workers assisted their parent company located abroad in procuring materials. These functions, as described above, are not considered to be production of an article within the meaning of Section 222 of the Trade Act.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department

determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 4th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29616 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,072]

Bowling Green Metalforming, Bowling Green, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 18, 2008 in response to a petition filed by a company official on behalf of workers at Bowling Green Metalforming, Bowling Green, Kentucky. The workers at the subject facility produce automotive stampings.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29615 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,565]

Dakota Integrated Systems, Chicago, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 2, 2008 in response to a petition filed by the United Automobile, Aerospace, and Agricultural Implemental Workers America—UAW, Local 3212 on behalf

of the workers at Dakkota Integrated Systems, Chicago, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29619 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,459]

Entegris, Inc., Chaska, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2008 in response to a petition filed by a Minnesota State Workforce Office on behalf of workers of Entegris, Inc., Chaska, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29617 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,588]

Genwove U.S. Ltd., Indian Trail, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 3, 2008, in response to a petition filed by a State Workforce Office on behalf of workers at Genwove U.S. Ltd., Indian Trail, North Carolina.

The petition has been withdrawn at the request of the petitioner. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of December 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29606 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-64,513]

Signa Group, Inc. d/b/a Whitehall Industries, Inc., Ludington, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 24, 2008 in response to a petition filed by a company official on behalf of the workers at Signa Group, Inc., d/b/a Whitehall Industries, Inc., Ludington, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of December 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8-29618 Filed 12-12-08; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 14, 2009.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Jeryl Fish, National Credit Union Administration,

1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-837-2861, E-mail: OCIOMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0004.

Form Number: NCUA 5300.

Type of Review: Revision to the currently approved collection.

Title: Revisions to NCUA Call Reports.

Description: The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Respondents: All Credit Unions.

Estimated No. of Respondents/

Recordkeepers: 8,049.

Estimated Burden Hours per

Response: 6.6 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden

Hours: 212,494.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 9, 2008.

Mary Rupp,

Secretary of the Board.

[FR Doc. E8-29655 Filed 12-12-08; 8:45 am]

BILLING CODE 7535-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request extensions without change of currently approved collections of information. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to

determine (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 the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date

1. *Evidence of Marital Relationship—Living with Requirements*; OMB 3220–0021. To support an application for a spouse or widow(er)'s annuity under

Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or

widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden for the information collection is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 48247 & 48248 on August 18, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence of Marital Relationship—Living with Requirements.

OMB Control Number: OMB 3220–0021.

Form(s) submitted: G–124, G–124a, G–237, G–238, G–238a.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Extension of a currently approved collection of information.

Affected public: Individuals or households.

Abstract: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the

deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriage, termination of previous marriages and residency requirements.

Changes Proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 1,100.

Total annual responses: 1,100.

Total annual reporting hours: 196.

2. *Evidence for Application of Overall Minimum:* OMB 3220–0083.

Under Section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad

service had been covered by the Social Security Act. The Social Security Overall Minimum Guarantee is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of forms G–319 (Statement Regarding Family and Earnings for Special Guaranty Computation) and G–320 (Statement by Employee Annuitant Regarding Student Age 18–19). One form is completed by each respondent.

Estimate of Annual Respondent Burden

The estimated annual respondent burden for the information collection is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–319 <i>Employee completed:</i>			
With assistance	5	26	2
Without assistance	100	55	92
G–319 <i>Spouse completed:</i>			
With assistance	5	30	3
Without assistance	100	60	100

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G-320 (Age 18 at Special Guaranty begin date or Special Guaranty Age 18 Attainments)	95	15	24
(Student monitoring done in Sept, March, and at end of school year)	170	15	43
Total	475		264

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 37515 & 37516 on July 1, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence for Application for Overall Minimum.

OMB Control Number: OMB 3220-0083.

Form(s) submitted: G-319, G-320.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Extension of a currently approved collection of information.

Affected public: Individuals or households.

Abstract: Under Section 3(f)(3) of the Railroad Retirement Act, the total monthly benefits payable to a railroad employee and his family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

Changes Proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 475.

Total annual responses: 475.

Total annual reporting hours: 264.

Additional information or comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. E8-29635 Filed 12-12-08; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension without change of a currently approved collection of information: 3220-0140, Employee's Certification. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Section 2 of the Railroad Retirement Act (RRA) provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if the employee's current marriage to the applicant is valid.

The requirements for obtaining documentary evidence to determine valid marital relationships are prescribed in 20 CFR 219.30 through 219.35. Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G-346 to obtain the information needed to determine whether the employee's current marriage is valid. Form G-346 is completed by the retired employee who is the husband or wife of the applicant

for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent. The RRB proposes no change to Form G-346. The RRB estimates the completion time for Form G-346 at five minutes per response.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 51535 and 51536 on September 3, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee's Certification.

OMB Control Number: OMB 3220-0140.

Form(s) submitted: G-346.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Extension of a currently approved collection of information.

Affected public: Individuals or households.

Abstract: Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

Changes Proposed: The RRB proposes no changes to Form G-346.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 6,900.

Total annual responses: 6,900.

Total annual reporting hours: 5750.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget,

Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. E8-29639 Filed 12-12-08; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension without change of a currently approved collection of information: 3220-0082, Medicare. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For

proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA-6, Employee Application for Medicare; Form AA-7, Spouse/Divorced Spouse Application For Medicare; and Form AA-8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act.

Further, in order for the RRB to determine if a qualified railroad retirement beneficiary who is claiming supplementary medical insurance coverage under Medicare is entitled to a Special Enrollment Period (SEP) and/or premium surcharge relief because of coverage under an Employer Group Health Plan (EGHP), it needs to obtain information regarding the claimant's EGHP coverage, if any. The RRB uses Form RL-311-F, Evidence of Coverage Under an Employer Group Health Plan, to obtain the basic information needed by the RRB to establish EGHP coverage for a qualified railroad retirement beneficiary. Completion of the forms is required to obtain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 34965 and 34966 on June 19, 2008) required by 44 U.S.C.

3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Medicare.

OMB Control Number: OMB 3220-0082.

Form(s) submitted: AA-6, AA-7, AA-8, RL-311-F.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or households; Business-or-other for profit.

Abstract: The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The forms in the collection obtain information needed to enroll non-retired employees and survivor applicants in the plan and also obtain information from railroad employers needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical coverage under Medicare.

Changes Proposed: The RRB proposes no changes to Forms AA-6, AA-7 and AA-8. Form RL-311-F is being revised to add an item which asks if the employee is still working. This information is being added to clarify the employment status of the employee and is need to determine the Special Enrollment Period.

The burden estimate for the ICR is as follows:

The estimated annual respondent burden is as follows:

Form number	Annual responses	Time (min)	Burden hours
AA-6	180	8	24
AA-7	50	8	7
AA-8	10	8	1
RL-311-F	800	10	133
Total	1,040		165

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312-751-3363) or Charles.Mierzwa@rrb.gov.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or Ronald.Hodapp@rrb.gov and to the OMB Desk Officer for the RRB, at the Office of Management and Budget,

Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.

[FR Doc. E8-29643 Filed 12-12-08; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 31a-1, SEC File No. 270-173, OMB Control No. 3235-0178.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a) is entitled “Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.” Rule 31a–1 requires registered investment companies (“funds”), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a–30) and of the auditor’s certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws. The Commission periodically inspects the operations of funds to insure their compliance with the provisions of the Act and the rules thereunder. The books and records required to be maintained by rule 31a–1 constitute a major focus of the Commission’s inspection program.

There are approximately 4621 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1750 hours annually per series for a total of 7000 annual hours per fund. The estimated total annual burden for all 4621 investment companies subject to the rule therefore is approximately 32,347,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be

created as a matter of normal business practice and to prepare financial statements. Thus, the Commission staff estimates that the total annual burden associated with rule 31a–1 is 3,234,700 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. The collection of information required by rule 31a–1 is mandatory. Responses will not be kept confidential. The records required by rule 31a–1 are required to be preserved pursuant to rule 31a–2 under the Investment Company Act (17 CFR 270.31a–2). Rule 31a–2 requires that certain of these records be preserved permanently, and that others be preserved six years from the end of the fiscal year in which any transaction occurred. In both cases, the records should be kept in an easily accessible place for the first two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: nfraser@omb.eop.gov; and (ii) Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8–29503 Filed 12–12–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form ADV–E, Sec File No. 270–318, OMB Control No. 3235–0361.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities

and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ADV–E (17 CFR 279.8) is the cover sheet for accountant examination certificates filed pursuant to rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) by certain investment advisers retaining custody of client securities or funds. Respondents each spend approximately three minutes, annually, complying with the requirements of the form.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: December 5, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8–29504 Filed 12–12–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 11a1-1(T); OMB Control No. 3235-0478; SEC File No. 270-428.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in the following rule: Rule 11a1-1(T) (17 CFR 240.11a1-1(T)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

On January 27, 1976, the Commission adopted Rule 11a1-1(T), to certain exempt transactions of exchange members for their own accounts that would otherwise be prohibited under section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 1,151 respondents that require an aggregate total of 32 hours to comply with this rule. Each of these approximately 1,151 respondents makes an estimated 20 annual responses, for an aggregate of 23,020 responses per year. Each response takes approximately 5 seconds to complete. Thus, the total compliance burden per year is 32 hours (23,020 × 5 seconds/60 seconds per minute/60 minutes per hour = 32 hours). The approximate cost per hour is \$519, resulting in a total cost of compliance for the annual burden of \$16,608 (32 hours @ \$519).

Compliance with Rule 11a1-1(T) is necessary for exchange members to

make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under Section 11(a) of the Exchange Act. Compliance with Rule 11a1-1(T) does not involve the collection of confidential information. Rule 11a1-1(T) does not have a record retention requirement per se. However, responses made pursuant to Rule 11a1-1(T) may be subject to the recordkeeping requirements of Rules 17a-3 and 17a-4. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: nfraser@omb.eop.gov; and (ii) Lewis W. Walker, Acting Director, Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: December 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29505 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 12f-1, OMB Control No. 3235-0128, SEC File No. 270-139.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information provided for in the following rule: Rule 12f-1 (17 CFR 240.12f-1).

Rule 12f-1 (the "Rule"), originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et*

seq.) ("Act"), as modified in 1995 and 2005, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported pursuant to an effective transaction reporting plan contemplated by Rule 601 of Regulation NMS, the date of the Commission's suspension of unlisted trading privileges in the security on the exchange, and any other pertinent information. Rule 12f-1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f-1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently 11 national securities exchanges subject to Rule 12f-1. The burden of complying with Rule 12f-1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as 11 responses annually and that each respondent's related cost of compliance with Rule 12f-1 would be \$168.00, or the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is \$1,848.00 (11 responses × \$168.00/response).

Compliance with Rule 12f-1 is mandatory. Rule 12f-1 does not have a record retention requirement *per se*. However, responses made pursuant to Rule 12f-1 are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4 of the Act. Information received in response to Rule 12f-1 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: nfraser@omb.eop.gov; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: December 8, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29506 Filed 12-12-08; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 12f-3; OMB Control No. 3235-0249; SEC File No. 270-141.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information provided for in the following rule: Rule 12f-3 (17 CFR 240.12f-3).

Rule 12f-3 (the "Rule"), which was originally adopted in 1934 pursuant to sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Act"), as modified in 1995, prescribes the information which must

be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f-3 is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the Rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f-3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the Rule.

The Commission staff estimates that there could be as many as 11 responses annually and that each respondent's related cost of compliance with Rule 12f-3 would be \$168.00, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is \$1,848.00 (11 responses × \$168.00/response).

Compliance with the application requirements of Rule 12f-3 is mandatory, though the filing of such applications is undertaken voluntarily. Rule 12f-3 does not have a record retention requirement *per se*. However, responses made pursuant to Rule 12f-3 are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4

of the Act. Information received in response to Rule 12f-3 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: nfraser@omb.eop.gov; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

December 8, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29507 Filed 12-12-08; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 17Ac2-1, SEC File No. 270-95, OMB Control No. 3235-0084.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17Ac2-1 (17 CFR 240.17Ac2-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ac-2, pursuant to Section 17A(c) of the Exchange Act, generally requires transfer agents to register with their Appropriate Regulatory Agency ("ARA"), whether the Commission, the

Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, and to amend their registrations if the information becomes inaccurate, misleading, or incomplete.

Paragraph 1 of Rule 17Ac-2, requires transfer agents to file a Form TA-1 application for registration with the Commission where the Commission is their appropriate regulatory agency. Transfer agents must also file an amended Form TA-1 application for registration if the existing Form TA-1 becomes inaccurate, misleading, or incomplete. The Form TA-1s must be filed with the Commission electronically, absent an exemption, on EDGAR pursuant to Regulation S-T (17 CFR 232).

The Commission receives on an annual basis approximately 100 applications for registration on Form TA-1 from transfer agents required to register with the Commission. Included in this figure are amendments to Form TA-1 as required by Paragraph (c) of Rule 17Ac2-1 to address information that has become inaccurate, misleading, or incomplete. Based on past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac-1 and Form TA-1 is one and one-half hours with a total burden of 150 hours per year.

Comments are invited on: (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 estimates 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 the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Comments should be directed to Lewis A. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: December 8, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29508 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 24b-1, OMB Control No. 3235-0194, SEC File No. 270-205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Rule 24b-1 (17 CFR 240.24b-1).

Rule 24b-1 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto.

There are eleven national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of five and one half hours per year. The staff estimates that the average cost per respondent is \$65.18 per year, calculated as the costs of copying (\$13.97) plus storage (\$51.21), resulting in a total cost of compliance for the respondents of \$716.98.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: nfraser@omb.eop.gov; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: December 8, 2008.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29509 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28528; 813-332]

TWB Investment Partnership, L.P., et al.; Notice of Application

Date: December 9, 2008.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") exempting applicants from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain investment vehicles formed for the benefit of partners and key eligible current and former employees of Perkins Coie LLP ("Perkins") and certain of its affiliates from certain provisions of the Act. Each such entity will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

APPLICANTS: TWB Investment Partnership, L.P. and TWB Investment Partnership II, L.P. (collectively, the "Investment Funds"), and Perkins.

FILING DATES: The application was filed on April 3, 2001, and amended on February 6, 2004 and November 26, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 January 5, 2009 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 who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, c/o Martin E. Lybecker, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at 202-551-6812, or Mary Kay Frech, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. Perkins is a law firm organized as a Washington limited liability partnership that is owned exclusively by individuals or professional service corporations engaged in the practice of law. These individuals and the shareholders of the professional service corporations are referred to as "Partners".

2. The Investment Funds are Delaware limited partnerships. Subsequent pooled investment vehicles identical in all material respects to the Investment Funds (other than investment objectives and strategies) that may be offered in the future to the same classes of investors as those investing in the Investment Funds (the "Subsequent Funds") (collectively with the Investment Funds, the "Funds"), if any, will also be structured as limited partnerships, although a Subsequent Fund could be structured as a domestic partnership, limited liability company, corporation, trust, or other entity. The Investment Funds have been, and each Subsequent Fund will be, established to enable the Eligible Investors (as defined below) to participate in certain investment opportunities that come to the attention of Perkins. Perkins expects to form new pools several times a year, with each pool represented by a separate series of interests in the Funds ("Series") offered at a specific time or over a specified period of time (the "Investment Period"). Each Series will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Participation as investors in a Fund will allow Eligible Investors to diversify their investments and to have the opportunity to participate in investments that might not otherwise be

available to them or that might be beyond their individual means.

3. The Funds will operate as non-diversified, closed-end management investment companies. Perkins or a wholly-owned subsidiary of Perkins will serve as the general partner ("General Partner") of each Fund. The General Partner will appoint one or more investment committees for each Fund (each, an "Investment Committee"). Each member of the Investment Committees will be a current or former Partner and may be, but is not required to be, an investor in the Fund (a "Fund Investor"). The General Partner and the Investment Committees will be registered as investment advisers if required under the Investment Advisers Act of 1940.

4. Interests in the Series ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or Regulation D thereunder. Interests will be offered only to Eligible Investors who at the time of the offer consist of "Eligible Employees," "Qualified Investment Vehicles," "Immediate Family Members" (each as defined below), and Perkins. Prior to offering a subscription agreement to an individual, the General Partner must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards.

5. An "Eligible Employee" is a person who is, at the time of investment, a current or former Partner or an employee of Perkins who (a) meets the standards of an "accredited investor" set forth in Rule 501(a)(5) or Rule 501(a)(6) of Regulation D under the Securities Act ("Category 1 investor"), or (b) is one of 35 or fewer Partners or employees of Perkins who meets the following salary and other requirements ("Category 2 investor").¹ Each Category 2 investor will be a Partner or employee of Perkins who meets the sophistication requirements set forth in Rule 506(b)(2)(ii) of Regulation D under the Securities Act and who (a) has a graduate degree, has a minimum of 3 years of business and/or professional experience, has had compensation of at least \$150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least \$150,000 in each of the two immediately succeeding 12 month periods, or (b) is a "knowledgeable

employee," as defined in rule 3c-5 under the Act, of the Fund (with the Fund treated as though it were a "Covered Company" for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by Perkins) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.² If a Category 1 investor ceases to be accredited, the investor will retain the investments made while the investor was accredited, but will not be able to participate in current investments unless the investor meets the requirements for a Category 2 investor and the General Partner, in its discretion, allows the investor to participate as a Category 2 investor.

6. A "Qualified Investment Vehicle" is a trust or other entity the sole beneficiaries of which are Eligible Employees or their "Immediate Family Members" (defined as any parent, child, spouse of a child, spouse, brother or sister and includes any step or adoptive relationship) or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in Rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settler and principal investment decision-maker and which is counted toward the 35 non-accredited Fund Investors in a Fund. An Immediate Family Member who purchases Interests must be an accredited investor as defined in Rule 501(a)(5) or Rule 501(a)(6) of Regulation D.

7. Each Eligible Investor participating in a Fund will receive a private offering memorandum and the Fund's partnership agreement and any other organizational documents ("Offering Documents") prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports containing audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal

² Participation in the Funds is mandatory for all Partners who are required to contribute capital to Perkins (as determined by Perkins based on the amount of each individual's income) ("Capital Partners") and who are accredited investors, but only with respect to small investments (usually less than \$500 total per investment) in stock generally referred to as "founder's stock" and with respect to 20% of the first \$50,000 invested in each other investment the Investment Committees decide a Fund should make. Participation in the Funds is voluntary for Eligible Investors who are not Capital Partners.

¹ Any former Partner of Perkins will maintain a sufficiently close nexus with Perkins so as to preserve the community of interest between such Eligible Employee and Perkins.

year, unless the value of the assets of the particular Series at the end of the fiscal year is \$3 million or less, in which case the financial statements may be unaudited. In addition, as soon as practicable after the end of each tax year, each Fund will transmit a report to each Fund Investor setting out information with respect to that Fund Investor's distributive share of income, gains, losses, credits, and other items for federal and state income tax purposes.

8. Fund Investors will be permitted to transfer their Interests only upon their bankruptcy or death. If a Fund Investor becomes bankrupt, the receiver or trustee will have the right to settle or manage the bankrupt estate. The death of a Fund Investor will be deemed a withdrawal of the deceased Fund Investor unless the deceased Fund Investor's estate is permitted to continue as a Fund Investor by mutual agreement of the General Partner and the personal representative of the deceased Fund Investor. If the estate does not continue as a Fund Investor, it will be treated as a withdrawn Fund Investor.

9. Generally, a withdrawn Fund Investor will retain his or her Interests in investments made by the Fund before the Fund Investor's withdrawal until the investments are liquidated or written-off, except that unvested investments are treated differently, as described below. The Interests will not include any repurchase rights, and the Funds will not repurchase Interests from Fund Investors unless the shares are unvested or the parties otherwise agree. A Capital Partner who ceases to be a Partner will be required to withdraw from the Fund as to the mandatory portion of future Interests, unless the General Partner and Capital Partner otherwise agree, and will not be eligible to participate in the mandatory portion of any investments the Fund makes after the date of the Capital Partner's withdrawal.³ With the General Partner's consent, only a retired Partner may continue to participate in discretionary investments. Other Fund Investors will not be permitted to continue to participate in discretionary investments after withdrawal from the Fund. If a Partner leaves employment with Perkins other than due to retirement, he or she will be unable to participate in discretionary investments, the Fund will release the Partner from any capital commitment that the Fund had not yet spent, and the Fund will return any capital inadvertently collected from the Partner in excess of the cost of the Fund's investments.

10. Perkins reserves the right to impose vesting provisions on a Fund

Investor's investments in a Fund. If a Fund Investor leaves employment with or retires or resigns from Perkins during the Investment Period, unvested investments will be allocated to other Fund Investors, and to the extent that the Fund Investor has paid for the investment, the Fund Investor will be repaid his or her actual cost, unless the investment has already been written off. If a Fund Investor retires from Perkins during the Investment Period but continues as senior counsel to Perkins, investments that are subject to a vesting schedule may continue to vest during the Investment Period.

11. The Funds may reimburse Perkins for reasonable out-of-pocket expenses specifically attributable to the organization and operation of the Funds or any Series of the Funds. There will be no allocation of any of Perkins' operating expenses to the Funds. No separate management fee will be charged to a Fund by the General Partner, and no compensation will be paid by a Fund or by Fund Investors to the General Partner for its services.

12. The Funds may borrow from Perkins, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse to Fund Investors. If Perkins or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

13. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis:

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities

company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers, together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) and the rules and regulations thereunder to permit a Fund to: (a) Purchase or otherwise acquire, from Perkins or an affiliated person thereof, securities or interests in properties previously acquired for the account of Perkins, another Fund, or an affiliated person thereof, (b) sell or otherwise transfer, to Perkins or an affiliated person thereof, securities or interests in properties previously acquired by the Funds, (c) invest in companies, partnerships or other investment vehicles offered, sponsored, or managed by Perkins or an affiliated person thereof, (d) invest in securities of issuers for which Perkins or an affiliated person thereof has performed services and from which they may have received fees, (e) purchase or otherwise acquire interests in a company or other investment vehicle (i) in which Perkins or its Partners or employees own 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such affiliated person) or an affiliated person of Perkins, and (f) participate as a

³ See *supra* note 2.

selling security-holder in a public offering in which Perkins or any affiliated person thereof acts as or represents a member of the selling group.

4. Applicants state that the exemptions sought from section 17(a) are consistent with the purposes of the Act and the protection of investors. Fund Investors will be informed in the Offering Documents and the Fund's communications relating to a particular investment opportunity of the extent of the Fund's dealings with Perkins or any affiliated person thereof, and Eligible Investors, as financially sophisticated professionals and investors, will be able to evaluate the risks associated with those dealings. Applicants assert that the community of interest among Fund Investors and Perkins will serve to reduce the risk of abuse in transactions involving a Fund and Perkins or an affiliated person of Perkins.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement with the investment company unless authorized by the Commission. Applicants request relief to permit affiliated persons of a Fund, or affiliated persons of an affiliated person, to participate in joint transactions with the Fund. Joint transactions in which a Fund could participate include the following: (a) An investment by one or more Funds in a security: (i) In which Perkins, an affiliated person thereof (including Partners of Perkins), or another Fund, who agree to be bound by the terms of the conditions for the application, is a participant or plans to become a participant, or (ii) with respect to which Perkins or any affiliated person thereof is entitled to receive fees of any kind, including, but not limited to legal fees, placement fees, investment banking fees or brokerage commissions, or other economic benefits or interests; (b) an investment by one or more Funds in an investment vehicle sponsored, offered, or managed by Perkins or any affiliated person thereof; and (c) an investment by one or more Funds in a security in which an affiliated person of the Fund or Perkins, or an affiliated person of such a person, is a participant or plans to become a participant, including situations in which that person has a partnership or other interest in, or compensation arrangement with, the issuer, sponsor, or offeror of the security.

6. Applicants state that compliance with section 17(d) would cause the

Funds to forego investment opportunities simply because a Fund Investor, Perkins, or other affiliated persons of the Fund also had made or contemplated making a similar investment. In addition, because attractive investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of Perkins' purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to Perkins, the possibility is minimal that an affiliated person will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Applicants assert that the flexibility to structure co-investments and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent.

7. Section 17(f) of the Act requires investment companies to place their securities in the custody of certain custodians. Rule 17f-2 under the Act requires investment companies that maintain custody of their own securities to deposit the securities with a bank or other entity supervised by federal or state authorities. Applicants request an exemption from section 17(f) and rule 17f-2 to permit the following exceptions from the requirements of rule 17f-2: (a) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of Perkins or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of Perkins will be deemed employees of the Funds, (ii) officers and the General Partner of a Fund will be deemed to be officers of the Fund, and (iii) the General Partner of a Fund will be deemed to be the board of directors of the Fund; and (c) instead of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of Perkins. Applicants assert that the securities held by the Funds are most suitably kept in Perkins' files, where they can be referred to as necessary.

8. Section 17(g) of the Act requires that certain officers or employees of an investment company who have access to the company's securities or funds be bonded by a fidelity insurance company against larceny and embezzlement in the amounts prescribed in rule 17g-1. Rule 17g-1 requires that a majority of

directors who are not interested persons ("disinterested directors") take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g-1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g-1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g-1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules under the Act. Rule 17g-1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0-1(a)(7).

9. Applicants request an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit the General Partner of each Fund to take the action and make the approvals set forth in the rule, regardless of whether it is deemed to be an interested person of the Funds. Because the General Partner would be considered an interested person of the Funds, the Funds would not be able to comply with rule 17g-1 without the requested relief. Applicants also request an exemption from the requirements of paragraphs (g) and (h) of rule 17g-1 relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors. Applicants believe that the filing requirements are burdensome and unnecessary as applied to the Funds and that the notices otherwise required to be given to the board of directors would be unnecessary, as the Funds will not have boards of directors. Applicants also request an exemption from the requirements of paragraph (j)(3) of rule 17g-1 that the Funds comply with the fund governance standards defined in rule 0-1(a)(7). Each Fund will comply with all other requirements of rule 17g-1.

10. Section 17(j) of the Act and rule 17j-1 thereunder make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires every registered investment company to adopt a written code of ethics and every access person of a registered investment company to report personal securities transactions.

Applicants request an exemption from the requirements of rule 17j-1, with the exception of the anti-fraud provisions of paragraph (b), because they would be time-consuming and expensive and would serve little purpose in light of the community of interests among the Fund Investors by virtue of their common association with Perkins. Applicants assert that the requested exemption is consistent with the purposes of the Act because the dangers against which section 17(j) and rule 17j-1 are intended to guard are not present in the case of the Funds.

11. Applicants request exemption from the requirements contained in sections 30(a), 30(b), 30(e), and the rules and regulations thereunder, that registered investment companies file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants state that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Exemptive relief is requested to the extent necessary to permit each Fund to report annually to its Fund Investors in the manner prescribed for each Fund by its limited partnership agreement. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4, and 5 under section 16 of the Securities Exchange Act of 1934 ("Exchange Act") with respect to their ownership of Interests in the Funds. Applicants assert that, because there is no trading market for Interests and transfers of Interests are severely restricted, these filings are unnecessary for the protection of investors and would be burdensome to those who would be required to file them.

12. Rule 38a-1 requires investment companies to adopt, implement, and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Fund will comply with rule 38a-1(a), (c), and (d), except that (a) since the Fund does not have a board of directors, the management committee of the General Partner will fulfill the responsibilities assigned to the Fund's board of directors under the rule, and (b) since the management committee of the General Partner does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a-1 will not be obtained.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 (each a "Section 17 Transaction") will be effected only if the General Partner determines that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents, and the Fund's reports to its Fund Investors.

In addition, the General Partner will record and preserve a description of such Section 17 Transaction, its findings, the information or materials upon which its findings are based, and the basis therefore. All such records will be maintained for the life of a Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of Perkins (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The General Partner will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) gives the

participating Fund holding each investment sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term "Co-Investor" means any person who is: (a) an affiliated person of the Fund (as defined in section 2(a)(3) of the Act); (b) Perkins and any Perkins entities; (c) a Partner or employee of Perkins or any affiliate of Perkins, as defined in rule 12b-2 under the Exchange Act (a "Perkins entity"); (d) an investment vehicle offered, sponsored, or managed by Perkins or a Perkins entity; or (e) a company in which a Perkins entity acts as an officer, director, or general partner, or has a similar capacity to control the sale or disposition of the company's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are NMS securities pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder.

5. Each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended financial statements audited by independent public accountants with respect to those Series in which the Fund Investor held Interests, unless the value of the assets of the particular Series at the end of the fiscal year is \$3 million or less, in which case the financial statements as to such Series may be unaudited. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the General

Partner will send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his federal and state income tax returns and a report of the investment activities of the Fund during such year.

6. Each Fund will maintain and preserve, for the life of each such Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Fund to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29560 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 17, 2008 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to approve the 2009 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

Item 2: The Commission will consider whether to adopt amendments to provide for companies' financial statement information to be filed with the Commission in interactive data format, according to a specified phase-in schedule.

Item 3: The Commission will consider whether to adopt amendments to provide for mutual fund risk/return summary information to be filed with the Commission in interactive data format. The Commission will also consider whether to adopt amendments to permit investment companies to submit portfolio holdings information

under the Commission's interactive data voluntary program without being required to submit other financial information.

Item 4: The Commission will consider whether to adopt amendments that would define terms related to annuity contracts under the Securities Act of 1933, and whether to adopt amendments related to periodic reporting requirements under the Securities Exchange Act of 1934.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: December 10, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29683 Filed 12-12-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59060; File No. SR-CBOE-2008-115]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to FLEX Options Expirations

December 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2008, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding permissible expiration dates for Flexible Exchange Options ("FLEX Options").³ The text of the

proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to modify the permissible expiration dates for FLEX Options. These options are governed by Exchange Chapters XXIVA and XXIVB. Under current CBOE Rules 24A.4 and 24B.4, FLEX Options may not expire on any business day that falls on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Option (an "Expiration Friday").⁴ However, subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX

or FLEX Equity Options. FLEX Index Options are index options that are subject to the FLEX rules in Chapters XXIVA or XXIVB of the CBOE Rules. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading or for warrant trading on the Exchange. FLEX Equity Options are options on specified equity securities that are subject to the FLEX rules in Chapters XXIVA or XXIVB of the CBOE Rules. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with CBOE Rule 5.3, which includes but is not limited to stock options and exchange-traded fund options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.19.

⁴ For example, under the current rule, a FLEX option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the "three business day" expiration restriction.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options

quarterly index options ("QIX") and Non-FLEX Weeklys Options expire.⁵

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any business day. Although the expiration date restrictions would be eliminated, the Exchange notes that certain position limit and reporting requirements will continue to apply. FLEX Index Options overlying all industry indexes, all micro narrow-based indexes, and certain broad-based indexes remain subject to position limits under CBOE Rules 24A.7 and 24B.7. FLEX Index Options on certain other broad-based indexes (specifically the BXM, DJX, NDX, OEX, RUT, SPX, VIX, VXD, VXN, XEO, CBOE S&P 500 Three-Month Realized Variance and S&P 500 Three-Month Realized Volatility), and FLEX Equity Options are not subject to position limits but remain subject to reporting requirements under CBOE Rules 24A.7 and 24B.7. Additionally, *all* FLEX options remain subject to the position reporting requirements of CBOE Rule 4.13(a).⁶ Moreover, the Exchange and member organizations each have the authority, pursuant to CBOE Rule 12.10,

to impose additional margin as deemed advisable.

Beyond the above-described position limit and reporting requirements, for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under CBOE Rules 24A.7 and 24B.7 for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX Options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as "comparable Non-FLEX Options"). Such FLEX Options and comparable Non-FLEX Options would be subject to the position limits that are applicable to the Non-FLEX Options.⁷ The aggregation requirement would apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index.⁸ These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.⁹ Once approved, the

Exchange intends to evaluate the continued need for maintaining this safeguard and may consider proposing changes through a separate rule change filing.

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX Options will be permitted before (but not after) the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Option series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules.

For example, a FLEX Trader could establish a FLEX Option position in a European-style, am-settled SPX 1650 Call option series with an expiration of Aug 16, 2013 (which would be an Expiration Friday). In such an instance, once and if the Non-FLEX, European-style, am-settled SPX 1650 Call option series that expires on August 16, 2013 is listed for trading, the established FLEX Option position would be fully fungible with transactions in the Non-FLEX Option series. Any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures.

CBOE believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter ("OTC") market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction). By expanding the eligible expiration dates for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being

⁵ Rules 24A.7(d) and 24B.7(d) provide that:

(1) Commencing at the close of trading two business days prior to the last trading day of the calendar quarter, positions in P.M. Settled FLEX Index Options (*i.e.*, FLEX Index Options having an exercise settlement value determined by the level of the index at the close of trading on the last trading day before expiration) shall be aggregated with positions in Quarterly Index Options on the same index with the same expiration ("comparable QIX options") and shall be subject to the position limits set forth in Rule 24.4, 24.4A or 24.4B, as applicable.

(2) Commencing at the close of trading two business days prior to the last trading day of the week, positions in FLEX Options that are cash settled (*i.e.*, FLEX Index Options or Credit Default Options) shall be aggregated with positions in Short Term Option Series on the same underlying (e.g., same underlying index as a FLEX Index Option) with the same means for determining exercise settlement value (e.g., opening or closing prices of the underlying index) and same expiration ("comparable Weekly options") and shall be subject to the position limits set forth in Rule 24.4, 24.4A, 24.4B or 29.5, as applicable.

⁶ CBOE Rule 4.13(a) provides that "[i]n a manner and form prescribed by the Exchange, each member shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of this Rule, the term "customer" in respect of any member includes "the member, any general or special partner of the member, any officer or director of the member, or any participant, as such, in any joint, group or syndicate account with the member or with any partner, officer or director thereof." CBOE Rule 4.13(d).

⁷ Thus, as soon as a FLEX Option position that expires on Expiration Friday is opened and as long as that position remains open, it would be subject to the position limit aggregation requirement at the position limits that are applicable to Non-FLEX Options. By comparison, the position limit aggregation requirement for FLEX Index Options that expire on the same date as Non-FLEX QIX or Weekly Options only applies as of the close of trading two business days prior to the last trading day of the calendar quarter or week, as applicable. See note 5, *supra*; see also CBOE Rules 4.11, *Position Limits* (which contains position limits for Non-FLEX Equity Options); 24.4, *Position Limits for Broad-Based Index Options*; 24.4A, *Position Limits for Industry Index Options*; 24.4B, *Position Limits for Options on Micro Narrow-Based Indexes as Defined Under Rule 24.2(d)*; and 29.5, *Position Limits* (which contains position limits for Credit Options).

⁸ A closing exercise settlement value (also referred to as a "p.m. settlement") is determined by reference to the reported level of the index as derived from the closing prices of the component securities. See CBOE Rules 24A.4(b)(2) and 24B.4(b)(2).

⁹ The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as "triple witching"). The Exchange's proposed limitations on p.m. settlements would apply during triple witching expirations, as well as on all other Expiration Fridays.

able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options. CBOE also believes this change is consistent and more competitive with the existing practice for trading flex-style options on futures exchanges.¹⁰

CBOE notes that when the FLEX Option rules were initially proposed and approved almost sixteen years ago, the Exchange was uncertain what market impacts, if any, excessive FLEX positions would have on the market or on firms.¹¹ To minimize the risk of adverse market effects, at the time the FLEX rules were first introduced the Exchange put in place certain position limit boundaries (which have been modified over time) and the requirement that the FLEX expiration date be no closer than three business days from any Non-FLEX Option Expiration Friday. However, in light of the Exchange's experience in trading FLEX Options to date, specifically with respect to the diversity in FLEX Option trading, the relatively small percentage FLEX Options trading compared to overall trading on the Exchange, and the lack of market disruptions or problems caused by or on existing FLEX Option

expirations, CBOE no longer believes that the three business day expiration restriction is necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹² To the contrary, CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC and futures counter-parts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

Although the expiration date restrictions would be eliminated, the Exchange notes that the above-described position limit and reporting requirements will continue to apply. Moreover, the Exchange and member organizations each have the authority, pursuant to CBOE Rule 12.10, to impose additional margin as deemed advisable. CBOE believes these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations. Beyond this, however, CBOE is also proposing to impose the above-described aggregation requirement for FLEX Options that have the same expiration as comparable Non-FLEX Options at the position limit amounts that are applicable to the Non-FLEX Options, and the above-described limitations on FLEX Index Option p.m. settlements. Further, it is anticipated that there would continue to be limited secondary trading in any FLEX Option series having a particular expiration date due to the diversity inherent in FLEX Options and that FLEX expiration concentrations should be rare.

In proposing this change to the eligible FLEX expiration dates, CBOE is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their substantial investment portfolios, on the one hand, and the potential for adverse effects on the market or on firms that might be

attributable to excessive FLEX positions which expire near or at the expiration date for Non-FLEX Options, on the other hand. CBOE is also cognizant of the OTC market, in which no position limit, expiration date and p.m. settlement restrictions apply. In light of these considerations,¹³ CBOE believes this change is appropriate and reasonable and that it will provide market participants with additional flexibility to determine expiration dates and choice of venue that best comport with investors' particular needs.

Finally, the Exchange has confirmed with the OCC that OCC can configure its systems to support the expiration of FLEX Options on any business day.

2. Statutory Basis

By expanding permissible expiration dates for FLEX Options, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change would provide members and investors with additional opportunities to trade customized options in an exchange environment, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹³ Besides the fact that OTC customized options are not subject to a restriction on expiration date and p.m. settlement, the Exchange notes that FLEX Options can be designated as American-style (which can be exercised at any time up to the day before expiration) or European- or European-Capped-style (which can be exercised only at expiration). Though it is possible for FLEX Options that are American-styled to be exercised any time, including during the three business day expiration restriction period, there have been no market disruptions or problems caused by the early exercise of American-style FLEX options at or near Non-FLEX expirations. In addition, it is not uncommon for similar products across markets to have the same expiration dates. For example, the contracts for stock index futures, stock index options, and stock options all expire on the same triple witching days occurring on the third Friday of March, June, September, and December.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁰ For example, expiration dates for Chicago Mercantile Exchange ("CME") flex options may be specified for any exchange business day up to and including the day of determination of the final settlement price of the underlying futures contract. In addition, CME flex options are permitted in puts and calls that do not have the same underlying futures contract, same strike price, same exercise style, and same expiration date as standard listed options that are already available for trading. Trading in standard options under certain flexible trading procedures is permitted prior to the listing of such standard options. Once and if the standard options are listed, all existing open positions established under the flexible trading procedures are fully fungible with transactions in the standard option series, and any further trading in the series is as standard options subject to the standard option trading procedures. See, e.g., CME Rules 351A.31A and 357A.31A, and CME Equity Futures and Options 2007 Information Guide at pages 46-47, located at <http://www.cme.com/files/EquityIndexManual.pdf>.

¹¹ See Securities Exchange Act Release Nos. 31361 (October 27, 1992) 57 FR 52655 (November 4, 1992) (SR-CBOE-92-17) (notice of filing of proposed rule change relating to Flexible Exchange Options) and 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (Order approving SR-CBOE-92-17). At the time of the proposal, the Exchange also anticipated that there would be limited secondary trading in any FLEX Option series having a particular expiration date due to the diversity inherent in FLEX Options and that FLEX expiration concentrations should be rare. These observations appear to be accurate for the trading in FLEX Options to date.

¹² In further support of its proposal, the Exchange also notes that it is not aware of any market disruptions or problems caused by customized options in the OTC or futures markets that expire on or near Expiration Friday. Moreover, to the extent there may be a risk of adverse market effects attributable to options that would otherwise be traded in a non-transparent fashion in the OTC market, CBOE believes that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2008-115 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-2008-115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2008-115 and should be submitted on or before January 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29556 Filed 12-12-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59053; File No. SR-ISE-2008-90]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Alternative Primary Market Makers

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 21, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Rule 802 to provide for an Alternative Primary Market Maker. The text of the proposed

rule change is as follows, with additions *italicized*:

Rule 802. Appointment of Market Makers

- (a) No change.
- (b) (1) The Board or designated committee will allocate equity options classes into groupings ("Groups" of options) and will make appointments to those Groups rather than individual classes, except as provided in paragraph (f) and *Supplementary Material .02* below. Absent an exemption by the Exchange, an appointment of a market maker shall be limited to the options classes trading in no more than one Group for each Membership held by the market maker.
- (2) No change.
- (c)-(f) No change.

Supplementary Material to Rule 802

.01 No change.
.02 A Member that is approved to act in the capacity of a Competitive Market Maker with respect to one or more CMM Rights may voluntarily be appointed to act as an "Alternative Primary Market Maker," so long as the Exchange has determined that such Member has the appropriate systems and procedures in place to undertake the responsibilities of a Primary Market Maker.

(a) The Exchange may appoint an Alternative Primary Market Maker to an options class only in the event that no Primary Market Makers or Second Market Primary Market Makers seek allocation of the security.

(b) If no Primary Market Makers or Second Market Primary Market Makers seek allocation of an options class, all eligible Competitive Market Makers will be given notice and an opportunity to seek allocation of the security as an Alternative Primary Market Maker. Such allocations will be made by the Allocation Committee according to the guidelines contained in Rule 802.

(c) An Alternative Primary Market Maker shall have all of the responsibilities and privileges of a Primary Market Maker under the Rules with respect to all appointed options classes.

(d) Options classes allocated to Alternative Primary Market Makers may be traded in the Second Market as provided in Chapter 9 of the Rules. With respect to options classes traded in the First Market, such classes will not be allocated to a particular Group under Rule 802(b)(1), and all Competitive Market Makers shall be eligible for appointment to such classes.

(e) If an Alternative Primary Market Maker ceases trading of an options

¹⁶ 17 CFR 200.30-3(a)(12).

¹ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

class, the class will be reallocated by the Exchange to a Primary Market Maker or another Alternative Primary Market Maker, as appropriate.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance its market by establishing Alternative Primary Market Makers ("Alternative PMMs"). Currently, when the ISE lists new options classes, it allocates them to one of its Primary Market Makers ("PMMs") under Rule 802. Pursuant to power delegated to the Board, an Allocation Committee, which consists of representatives of Electronic Access Members, makes allocation decisions according to the guidelines contained in Rule 802. Under Rule 802, allocations are voluntary, and at times ISE is unable to list new products because none of the PMMs are interested in trading the class. At other times, ISE must delist certain products due to lack of PMM interest. Most frequently, this occurs with respect to options on stocks that have pending corporate actions, and options products that are not listed at any other options exchange. Despite the lack of PMM interest, these products may be of interest to other market making firms at the Exchange.

To better enable the Exchange to list and retain these options classes, ISE proposes to appoint Competitive Market Makers ("CMMs") that meet certain qualifications as Alternative PMMs when none of the PMMs want an allocation.³ Specifically, under this proposal, in order to be appointed as an

Alternative PMM, the Exchange must first determine that a CMM has the appropriate systems and procedures in place to undertake the responsibilities of a PMM. Further, before an Alternative PMM is appointed to an options class, that options class will always be offered first to the PMMs or Second Market PMMs (as applicable) under the Exchange's regular allocation procedure. Rule 802(b)(1) currently states that the Board or a designated committee will make appointments to "Groups" of options rather than individual classes. For the purpose of allocating a product, *i.e.*, an individual options class, to an Alternative PMM, the Exchange proposes to carve out an exception in Rule 802(b)(1) pursuant to which the Allocation Committee shall allocate individual options classes to an Alternative PMM in accordance with Supplementary Material .02 to Rule 802. The options class may be a new listing or a listing that the current PMM or Second Market PMM (as applicable) no longer wishes to make a market in.

Under the proposal, if no PMMs or Second Market PMMs (as applicable) want the allocation, then the Alternative PMMs will be offered the opportunity to serve as PMM in the options class according to ISE's regular allocation procedures. Once appointed to an options class, the Alternative PMM will have all of the responsibilities and privileges of a PMM under the Rules with respect to all appointed options classes. For example, Alternative PMMs will enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the options class to which the Alternative PMM is appointed, to conducting the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that options class.

Finally, if an Alternative PMM ceases trading of an options class, that options class will be reallocated by the Exchange. An Alternative PMM will not have any transferable rights in options classes to which it is appointed nor will it have any PMM voting rights.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in

general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to allocate more new products and continue listing existing products for the benefit of both investors and the Exchange. Further, the Exchange believes that Alternative PMMs will make ISE a more competitive market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2008-90 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.

³ Only CMMs that own or lease CMM Rights shall be eligible to be appointed as an Alternative PMM. That is, Electronic Access Members ("EAMs") acting as market makers in the Second Market will not be eligible to be appointed as Alternative PMMs.

All submissions should refer to File Number SR-ISE-2008-90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2008-90 and should be submitted on or before January 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29555 Filed 12-12-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59066; File No. SR-ISE-2008-78]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Quoting Obligations for Competitive Market Makers

December 8, 2008.

I. Introduction

On October 21, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the Exchange's quoting obligations for Competitive Market Makers ("CMMs"). The proposed rule change was published for comment in the **Federal Register** on November 3, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend ISE Rules 713, 804 and 805 to change the quoting obligation for the Exchange's CMMs. ISE currently requires CMMs to participate in the opening and maintain continuous quotations in all of the series of at least 60 per cent of the options classes in the bin or 60 classes, whichever is less. In addition, if a CMM chooses to quote any series of an options class above and beyond this minimum requirement, it must then maintain continuous quotations in all of the series of that class throughout that trading day. In September 2007, the Exchange initiated a pilot to reduce the quoting obligations for CMMs in 20 options classes.⁴ Under the Pilot, CMMs were required to maintain quotations in only 60 per cent of the series of an options class overlying the pilot program securities. The Pilot recently expired and the Exchange now proposes to change the quoting requirements for CMMs on a permanent basis.

The Exchange does not believe that the reduced quoting obligations adopted as part of the Pilot have had any negative effect on the quality of its markets.⁵ Therefore, ISE proposes to adopt the 60 per cent standard for all options series on a permanent basis, except for CMMs that receive preferenced order flow. The Exchange proposes that a CMM will be required to maintain continuous quotations in at least 90% of the series of any option class in which it receives preferenced orders.

The Exchange also proposes to lower the minimum number of options classes that a CMM is required to quote from 60

to 40. The Exchange believes that lowering the requirement will attract additional market making participants on the ISE.

Finally, the Exchange proposes to amend Rule 805 (Market Maker Orders) regarding the percentage of volume a CMM may execute in options to which it is not appointed. Specifically, Rule 805 currently provides that a CMM may execute up to 25% of its volume in options classes to which it is not appointed. Because the Exchange is lowering the number of appointed classes in which a CMM is required to quote, the Exchange believes it is appropriate to base the 25% allowance on volume that is executed while a CMM is actually fulfilling its market maker quotation obligations.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that an exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, which is intended to reduce the number of options quotations required to be submitted without adversely affecting the quality of the Exchange's markets, is consistent with the Act. The Commission notes that the Exchange has operated a one-year Pilot program that reduced the quoting obligations for CMMs and during the Pilot period the Exchange did not observe any adverse effect on its market.⁸ The Commission believes it is appropriate to adopt the modified quotation obligations for CMMs on a permanent basis. In addition, the Commission believes that it is appropriate to reduce the quoting obligations of a CMM because the percentage of volume a CMM may

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58861 (October 27, 2008), 73 FR 65432 (the "Notice").

⁴ See Securities Exchange Act Release No. 56444 (September 14, 2007), 72 FR 54089 (September 21, 2007) (Order Granting Approval of SR-ISE-2007-45 Relating to a Quote Mitigation Plan for Competitive Market Makers) (the "Pilot").

⁵ According to the Exchange, in practice, market makers simply widen their quotations when they do not want to trade in a particular series, so requiring them to maintain continuous quotations in all series merely increases capacity requirements for the market makers.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ The Commission notes that it has already approved internal quote mitigation strategies on other exchanges that relieve some market makers of the obligation to quote every series of every class to which they are appointed. See Phlx Rule 1014(b)(ii)(D)(1) and Amex Rule 994(c)(iv).

⁴ 17 CFR 200.30-3(a)(12).

execute in options classes to which it is not appointed will be based on volume that is executed in those options classes in which a CMM maintains continuous quotes in fulfillment of its obligations as a market maker.

Finally, the Commission believes that it is appropriate to impose a higher continuous quoting requirement on CMMs who receive preferred order flow because such CMMs receive the benefit of enhanced allocation rights and therefore should assume an increased obligation to provide continuous quotations. The Commission notes that a similar quotation standard for preferred market makers was previously adopted on another exchange.⁹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-ISE-2008-78) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29559 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59069; File No. SR-NYSE-2008-124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending for Three Months to March 31, 2009 the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110

December 8, 2008.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 2, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to NYSE Rule 107A and Competitive Traders ("CTs") pursuant to NYSE Rule 110. The text of the proposed rule change is available at www.nyse.com, the NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63 ⁴ with the Securities and Exchange Commission ("Commission") proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium"). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the

NYSE HYBRID MARKETSM ("Hybrid Market").⁵

During each phase of the Hybrid Market, the NYSE implemented new system functionality that generated additional data to review. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over a twenty-four (24) month period.⁶

On October 24, 2008, the Commission approved the Exchange's new market model filing ("New Model").⁷ The New Model filing: (i) Provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker ("DMM"), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of the New Model, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Model two times over a six (6) month period.⁸

The Exchange is currently implementing the second phase ("Phase 2") of technology required for the operation of the New Model. Upon completion of the installation of the Phase 2 technology,⁹ the New Model will operate as a pilot scheduled to end on October 1, 2009. Accordingly, the Exchange seeks to have the ability to review data that will be generated as a

⁵ See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the NYSE HYBRID MARKETSM).

⁶ See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22).

⁷ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

⁸ See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96).

⁹ Phase 2 is scheduled to be completed no later than January 2, 2009.

⁹ See CBOE Rule 8.13(b)(iii) (requiring a preferred market-maker to provide continuous electronic quotes in at least 90% of the series of each class for which it receives preferred market-maker orders).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

part of the complete operation of the New Model related to RCMM and CT trading. Once Phase 2 implementation is complete, the NYSE will have the fuller data set to decide what roles, if any, RCMMs and CTs should perform at the NYSE. Thereafter, the Exchange will formally submit a proposal to the Commission outlining the roles, if any, these classes of traders have in the Exchange's New Model market. The Exchange is therefore proposing to extend the Moratorium as amended ¹⁰ for an additional three (3) months to March 31, 2009 in order to finalize its determination as to the roles of RCMMs and CTs at the NYSE.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

2. Statutory Basis

The basis under the Act ¹¹ for this proposed rule change is the requirement under Section 6(b)(5) ¹² that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles in that the review of data associated with RCMM and CT trading in light of the significant developments in its technology and New Model will allow the Exchange to make an informed decision as to the viability of RCMMs and CTs in this evolving marketplace and may potentially remove impediments to and better improve the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

¹⁰ See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

¹¹ 15 U.S.C. 78a.

¹² 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.¹³ The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the requirement that it give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

¹³ 15 U.S.C. 78s(b)(3)(A).

Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-124 and should be submitted on or before January 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-29554 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59064; File No. SR-NYSE-2008-91]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt a Policy Relating to Its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market

December 5, 2008.

I. Introduction

On September 26, 2008, the New York Stock Exchange LLC ("NYSE" or

¹⁴ 17 CFR 200.30-3(a)(12).

“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the Exchange to exercise the discretion to append an indicator (an “Aberrant Report Indicator”) to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The proposed rule change was published for comment in the **Federal Register** on October 10, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security.

The Exchange proposes to adopt as policies of the Exchange that it will:

- i. Monitor for trade prices that do not accurately reflect the prevailing market for a security;
- ii. Append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- iii. Discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange proposes to append retroactively the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security, commencing as of January 1, 2007.

The Exchange intends to urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information that they disseminate and to provide to data users an explanation of the parameters used in the Exchange’s aberrant trade policy. Upon adoption of the Aberrant Report Indicator, the Exchange also will contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are

still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market ⁴ appends the Aberrant Report Indicator to a trade in an NYSE-listed stock and will remind the users of the information that these are still valid trades in that they were executed and not broken, such as in the case of clearly erroneous trades.

The NYSE noted that, while the Consolidated Tape Association disseminates its own calculations of high, low and last sale prices, vendors and other data recipients frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange proposes to explain to those vendors and other data recipients the potential impact of including in those calculations a trade to which the Aberrant Report Indicator has been appended.

In determining whether to append the Aberrant Report Indicator, the Exchange will consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

Currently, the Exchange does not trade on an unlisted trading privilege (“UTP”) basis any securities listed on other markets. In the event that the Exchange commences UTP trading at some future date, the Exchange proposes that its policy will be to

consult with the listing exchange and with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In monitoring trade prices that may be inconsistent with the prevailing market, the Exchange proposes that Exchange policy will be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (*i.e.*, 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the “Reference Price” by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold (percent)
Between \$0 and \$15.00	Seven.
Between \$15.01 and \$50.00	Five.
In excess of \$50.00	Three.

The “Reference Price” refers to: (a) If the primary market for the security is open at the time of the trade, the national best bid or offer for the security; or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade’s designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from other markets and market participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380.

⁴ The Commission notes that any proposal by another regulatory organization to establish a policy to append an Aberrant Report Indicator to any trade report with respect to any trade executed on its market that it determines to be inconsistent with the prevailing market must be filed with the Commission as a proposed rule change under Section 19(b) of the Act.

Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁷

The Commission believes that the Exchange's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Exchange believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that the Exchange will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Exchange's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2008-91) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29558 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59063; File No. SR-NYSEArca-2008-114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Revise the Listing and Annual Fees Applicable to Paired Trust Shares

December 5, 2008.

I. Introduction

On October 22, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to revise the listing and annual fees applicable to Paired Trust Shares listed on NYSE Arca, LLC ("NYSE Arca Marketplace"), the equities facility of NYSE Arca Equities, Inc. ("NYSE Arca Equities"). The proposed rule change was published for comment in the **Federal Register** on November 5, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the current Fee Schedule, Paired Trust Shares (listed under NYSE Arca Equities Rule 8.400) are classified as "Derivative Securities Products." NYSE Arca proposes to reclassify Paired Trust Shares as "Structured Products" for purposes of the Fee Schedule. Specifically, the Exchange proposes to delete the term Paired Trust Shares from footnote 3 of the Fee Schedule (defining "Derivative Securities Products") and to add such term to footnote 4 of the Fee Schedule (defining "Structured Products").

As a result of the proposed rule change, the Listing and Annual Fees for Paired Trust Shares would change accordingly. Under the current Fee Schedule, the Listing Fee for Paired Trust Shares (classified as Derivative Securities Products) is \$5,000 per issue, and the Annual Fee for such securities, which is based on the number of shares outstanding per issue, ranges from \$2,000 to \$25,000 per issue. Under the proposal, the Listing Fee for Paired

Trust Shares (reclassified as Structured Products), which is based on the number of shares outstanding per issue, would range from \$5,000 to \$45,000 per issue, and the Annual Fee for such securities, which also is based on the number of shares outstanding per issue, would range from \$10,000 to \$55,000 per issue.

In addition, the Exchange proposes to make non-substantive changes to footnote 4 of the Fee Schedule, including updating the title of NYSE Arca Equities Rule 5.2(j)(6) to include Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁴ and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission believes that the proposal to reclassify Paired Trust Shares as Structured Products for purposes of the Fee Schedule reasonably reflects the similarity of this type of product to other Structured Products, the issuers of which do not hold underlying securities, commodities, futures, or other financial instruments (other than U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure specified obligations), unlike issuers of Derivative Securities Products. The Commission notes that, except for the shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust, for which annual and listing fees for 2008 have been waived,⁷ no issue of Paired

⁴ 15 U.S.C. 78f.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

⁷ See e-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 24, 2008 at 12:25 p.m. ("Nov. 24 E-Mail"); see also Securities Exchange Act Release No. 58598 (September 19, 2008), 73 FR 55888 (September 26, 2008) (SR-NYSEArca-2008-78) (approving the waiver of all Annual Fees for securities delisted from Amex and listed on the Exchange in connection with the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58878 (October 29, 2008), 73 FR 65912.

Trust Shares is currently listed on the Exchange.⁸ As such, the proposed amendment to the Fee Schedule and the new fee rates for issues of Paired Trust Shares would equally apply to all future issues of Paired Trust Shares listed on the Exchange under NYSE Arca Equities Rule 8.400.⁹ The Commission believes that the proposal is designed to equitably allocate reasonable dues, fees, and other charges among issuers of Paired Trust Shares, consistent with the requirements of Section 6(b)(4) of the Act.¹⁰ The Commission also believes that the additional, non-substantive changes to the Fee Schedule further clarify the format and application of the fees related to Structured Products.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSEArca-2008-114) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-29557 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 6453]

Culturally Significant Objects Imported for Exhibition Determinations: "Cezanne and Beyond"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as

closing of the purchase of Amex by NYSE Euronext).

⁸ See Nov. 24 E-Mail, *supra* note 7.

⁹ The Commission notes that, generally, under the Fee Schedule, issues of both Derivative Securities Products and Structured Products are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. The Annual Fees for such products are billed in January for the forthcoming year. See Footnote 8 of the Fee Schedule. The Exchange states that the 2009 Annual Fees for the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust will be billed in January 2009 based on the then current Fee Schedule. See Nov. 24 E-Mail, *supra* note 7.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: "Cezanne and Beyond," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Philadelphia Museum of Art, Philadelphia, PA, from on or about February 19, 2009, until on or about May 31, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202-453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 5, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-29634 Filed 12-12-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6454]

Culturally Significant Objects Imported for Exhibition Determinations: "The Munich Secession and America"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Munich Secession and America," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Frye Art

Museum, Seattle, WA, from on or about January 23, 2009, until on or about April 12, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 8, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-29605 Filed 12-12-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6452]

Culturally Significant Objects Imported for Exhibition Determinations: "Pride of Place: Dutch Cityscapes of the Golden Age"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Pride of Place: Dutch Cityscapes of the Golden Age," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 1, 2009, until on or about May 3, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of

the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 3, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-29630 Filed 12-12-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6451]

Culturally Significant Objects Imported for Exhibition Determinations: "Tales in Sprinkled Gold: Japanese Lacquer for European Collectors"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Tales in Sprinkled Gold: Japanese Lacquer for European Collectors," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, CA, from on or about March 3, 2009, until on or about May 24, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 4, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-29633 Filed 12-12-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6450]

Issuance of a Presidential Permit Authorizing the Construction, Operation and Maintenance of the Otay Mesa East Border Crossing Near San Diego, CA, at the International Boundary Between the United States and Mexico

SUMMARY: The Department of State issued a Presidential permit, effective December 8, 2008, authorizing the General Services Administration to construct, operate, and maintain a vehicular and pedestrian border crossing called "Otay Mesa East" near San Diego, California, at the international boundary between the United States and Mexico. In making this determination, the Department consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at WHA-BorderAffairs@state.gov; by phone at 202-647-9894; or by mail at Office of Mexican Affairs—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at <http://www.state.gov/p/wha/rt/permit/>.

SUPPLEMENTARY INFORMATION:

Following is the text of the issued permit:

By virtue of the authority vested in me as Deputy Secretary of State under Executive Order 11423, 33 FR 11741 (1963), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004) and Department of State Delegation of Authority 245 of April 23, 2001; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969, as amended (83 Stat. 852, 42 U.S.C. 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action in accordance with the National Historic Preservation Act of 1966, as amended

(80 Stat. 917, 16 U.S.C. 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the United States General Services Administration (GSA) (hereinafter referred to as the "permittee"), to construct, operate, and maintain a new commercial vehicle, passenger vehicle, and pedestrian land border crossing (hereinafter referred to as "Otay Mesa East"), approximately two miles east of the existing Otay Mesa border crossing near San Diego, California.

The term "facilities" as used in this permit means the facilities proposed to be constructed at the Otay Mesa East border crossing near San Diego, California. These facilities are likely to consist of the following improvements and structures:

- Inspection and X-Ray Facilities
- Containment Areas and Docks
- Commercial Inspection Building with Import and Export Docks
- Export Inspection
- Main Administrative Building with Pedestrian Facilities
- Entry and Exit Control Booths and related improvements
- Roadways and related Infrastructure, Pathways, Parking Lots, and related Lots
- Landscaping
- Ancillary Support Facilities
- Commercial Cargo and Passenger Vehicle lanes
- Related Improvements and Infrastructure

The term "Tier 1 environmental document" as used in this permit refers to the programmatic or first tier environmental impact statement that establishes the preferred corridor of State Route 11 and the preferred site of the Otay Mesa East border crossing.

The term "Tier 2 environmental document" as used in this permit refers to the second tier environmental impact statement or environmental assessment to be prepared after the issuance of this permit and before any construction may begin that will identify more detailed project-specific effects and mitigation measures.

This permit is subject to the following conditions:

Article 1. The facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions and requirements of this permit and any amendment thereof. This permit may be terminated upon a determination of the Executive Branch that the Otay Mesa East border crossing shall be closed. This permit may be amended by the Secretary of

State or the Secretary's delegate in consultation with the permittee and, as appropriate, other Executive Branch agencies; the permittee's obligation to implement such an amendment is subject to the availability of funds. The permittee shall make no substantial change in the location of the facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

Article 2. The permittee shall comply with all applicable federal laws and regulations regarding the construction, operation, and maintenance of the facilities. Further, the permittee shall comply with nationally recognized codes to the extent required under 40 U.S.C. 3312(b). The permittee shall cooperate with state and local officials to the extent required under 40 U.S.C. 3312(d).

Article 3. In the event that the Otay Mesa East border crossing is permanently closed and is no longer used as an international crossing, this permit shall terminate and the permittee may manage, utilize, or dispose of the facilities in accordance with its statutory authorities.

Article 4. As authorized by applicable federal laws and regulations, the permittee is a federal agency that is responsible for managing and operating the existing Otay Mesa border crossing and, upon acceptance of the facilities by the United States of America, the Otay Mesa East border crossing. This permit shall continue in full force and effect for only so long as the permittee shall continue the operations hereby authorized.

Article 5. This Article applies to transfer of the facilities or any part thereof as an operating land border crossing. The permittee shall immediately notify the United States Department of State ("Department") of any decision to transfer custody and control of the facilities or any part thereof to any other agency or department of the United States Government. Said notice shall identify the transferee agency or department and seek the approval of the Department for the transfer of the permit. In the event of approval by the Department of such transfer of custody and control to another agency or department of the United States Government, the permit shall remain in force and effect, and the facilities shall be subject to all the conditions, permissions and requirements of this permit and any amendments thereof. The permittee may transfer ownership or control of the facilities to a non-federal entity or individual only upon the prior express

approval of such transfer by the Department, which approval may include such conditions, permissions and requirements that the Department, in its discretion, determines are appropriate and necessary for inclusion in the permit, to be effective on the date of transfer.

Article 6. (1) The permittee or its agent shall acquire such right-of-way grants or easements and permits as may become necessary and appropriate.

(2) The permittee shall maintain the facilities and every part thereof.

Article 7. (1) The permittee shall take, or cause to be taken, all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation, and maintenance of the facilities, including those mitigation measures identified in both the Tier 1 and Tier 2 environmental documents, but only to the extent incorporated into either a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) to be issued by the permittee regarding the Otay Mesa East border crossing. In preparing its ROD or FONSI, the permittee shall consult with appropriate officials of the Federal Highway Administration (FHWA) and the permittee shall consider the mitigation measures recommended in the FHWA ROD.

(2) The permittee may make no irreversible change to the physical environment based upon this permit until it has received approval from the Department to proceed with construction, as provided in Article 9.

(3) Before issuing, or causing the issuance of, the notice to proceed for construction, the permittee shall obtain the concurrence of the United States Section of the International Boundary and Water Commission.

Article 8. The permittee shall file any applicable statements and reports that might be required by applicable federal law in connection with this project.

Article 9. The permittee shall not issue, nor cause to be issued, a notice to proceed for construction work until the Department has provided notification to the permittee that: (1) The Department has concluded, based on its review of the Tier 1 and Tier 2 environmental documents and the permittee's ROD or FONSI, that the continuation of this permit is in the U.S. national interest; and (2) the Department has completed its exchange of diplomatic notes with the Government of Mexico regarding authorization of construction. If the Department concludes that the continuation of this permit is not in the national interest of

the United States following its review of the environmental documents, including the permittee's ROD or FONSI, the Department shall revoke this permit. The permittee shall provide written notice to the Department at such time as the construction authorized by this permit commences, and again at such time as construction is completed, interrupted for more than ninety days or discontinued.

Article 10. This permit is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, in their individual or official capacities, or any other person. The issuance of this permit does not create any obligation on the part of the permittee or the United States of America to construct, operate, maintain, or accept the donation of all or any portion of the Otay Mesa East border crossing; provided, however, if the permittee does operate the facilities then it will do so in accordance with the terms and conditions of this permit.

Article 11. This permit shall expire ten years from the date of issuance in the event that the permittee neither has issued nor caused to be issued the notice to proceed for construction activities.

In witness whereof, I, John D. Negroponte, Deputy Secretary of State, have hereunto set my hand this 20th day of November 2008, in Washington, District of Columbia.

End Permit text.

Dated: December 9, 2008.

Alex Lee,

*Director, Office of Mexican Affairs,
Department of State.*

[FR Doc. E8-29622 Filed 12-12-08; 8:45 am]

BILLING CODE 4710-29-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, RTCA Special Committee 220: Automatic Flight Guidance and Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 220: Automatic Flight Guidance and Control meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 220: Automatic Flight Guidance and Control.

DATES: The meeting will be held January 13–15, 2009, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Honeywell, Inc., PRN A and B Rooms, 21111 N. 19th Ave., Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 220/Automatic Flight Guidance and Control meeting. The agenda will include:

January 13–15

- Welcome
 - Agenda Overview
 - Results of Presentation to October PMC
 - Installation Guidance Discussion
 - MOPS Status
 - Installation Guidance Status
 - Revise TORs
 - Organization of Work, Assign Tasks and Responsibilities
 - Establish Dates, Location, Agenda for Next Meeting
 - Any Other Business
- Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 5, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–29539 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Joint Meeting, RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE Working Group 71 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of

RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held February 23–27, 2009, from 8:30 a.m.–5:30 p.m.

ADDRESSES: The meeting will be held at Hotel NH Koeln Mediapark, Im Media Park 8b, Cologne, Germany, Reservation: +49.211.7811.100, Fax: +49.211.7811.888, E-mail: reservations.nrw.de@nh-hotels.com.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>; (2) Hotel Front Desk: (602) 273–7778; fax (602) 275–5616.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE Working Group 71 meeting. The agenda will include:

February 23

- Opening Plenary (Chair's Introductory Remarks, Review of Meeting Agenda and Agreement of Previous Minutes)
- Reports of Sub-Group Activity
- Other Committee/Other Documents Interfacing Personnel Reports (CAST, Unmanned Aircraft Systems, Security, WG–63/SAE S–18)
- Sub-Group Break Out Sessions
- New Members Introduction Session
- CAST Meeting: Closed
- Sub-group Breakout Sessions
- Plenary Session: Text Acceptance (for papers posted, commented on and reworked prior to Plenary)
- Executive Committee and SG Chairs/Secretaries Meeting

February 24

- Sub-Group Break Out Sessions
- Mandatory Paper Reading Session
- Executive Committee and SG Chairs/Secretaries Meeting

February 25

- IP Comment Reply & Sub-Group Break Out Sessions (focused on finalizing any changes to papers being presented later in the morning)
- Plenary Text Acceptance (for papers posted, commented on and reworked prior to Plenary)
- Sub-Group Break Out Sessions
- Executive Committee and SG Chairs/Secretaries Meeting

February 26

- Sub-Group Break Out Sessions
- Plenary Session
- Mandatory Paper Reading Session

- Executive Committee and SG Chairs/Secretaries Meeting

February 27

- IP Comment Reply & Sub-Group Break Out Sessions (focused on finalising any changes to papers being presented later in the morning)
 - Plenary Text Approval (reworked and late posted papers)
 - SG Report Outs
 - SG1: SCWG Document Integration Sub-Group
 - SG2: Issue & Rationale Sub-Group
 - SG3: Tool Qualification Sub-Group
 - SG4: Model Based Design & Verification Sub-Group
 - SG5: Object Oriented Technology Sub-Group
 - SG6: Formal Methods Sub-Group
 - SG7: Special Considerations Sub-Group
 - Closing Plenary (any other business, next meeting information, closing remarks, meeting evaluation, formal meeting close, meeting adjourned)
- Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 8, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–29541 Filed 12–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting, Special Committee 213/EUROCAE: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 213/EUROCAE, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79).

SUMMARY: The FAA is issuing this notice to advise the public of a third meeting of RTCA Special Committee 213, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held January 27–29, 2009 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Cessna Conference Center Auditorium, (Located in the Cessna Employees Fitness Center), 6711 West 31st Street South, Wichita, KS 67215.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 213 meeting. The agenda will include:

January 27

- Welcome, Introductions, and Agenda Review—Patrick, Tim, David—15 minutes
- Review and approve SC-213/WG-79 Minutes—Patrick, Tim, David—15 minutes
- Items:
 - General objectives of this meeting:
 - Develop Advanced Vision System CONOPS
 - Discuss work plan for synthetic and enhanced vision technologies
 - Proposed amendment to Terms of Reference—Lou—15 minutes
 - Conduct of meeting: Addressing issues, documenting issues, resolving issues, assignment of action items
 - Administrative: Begin thinking of follow-on meeting dates
 - Status of PMC decision on the MASPS document

January 28

Continuation of meeting to discuss Advanced Vision System CONOPS, as required.

January 29

- Conclude discussion of Advanced Vision System CONOPS
- New Business
- Summary and announcement of next meeting dates and locations
- Feedback

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 5, 2008.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. E8-29540 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wayne County, MI

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Clarification regarding the Final Environmental Impact Statement (FEIS) for the Detroit River International Crossing Study.

SUMMARY: This notice clarifies the role of the DVD contained in the back cover of the Final Environmental Impact Statement (FEIS) for the Detroit River International Crossing Study (DRIC). The back cover of the FEIS contains a DVD that is not part of the FEIS and should be disregarded. It has no role in FHWA's NEPA process; and has not and will not be used in FHWA's decision-making process. This action is pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, as amended and the Council on Environmental Quality Regulations (40 CFR parts 1500-1508).

DATES: The FEIS was made available to the public on November 25, 2008. EPA published the Notice of Availability on December 5, 2008. This notice does not change the availability date of the FEIS of December 5, 2008.

FOR FURTHER INFORMATION CONTACT:

Ryan Rizzo, Major Project Manager, at FHWA Michigan Division, 315 W. Allegan Street, Room 201; Lansing, MI 48933; by phone at (517) 702-1833, or e-mail at Ryan.Rizzo@fhwa.dot.gov.
David Williams, Environmental Program Manager, FHWA Michigan Division, 315 W. Allegan Street, Room 201; Lansing, MI 48933; by phone at (517) 702-1820; or e-mail at David.Williams@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: On December 5, 2008, FHWA discovered the DRIC FEIS, which had been distributed to the public, included a DVD in the back cover of the document. This DVD was not presented to FHWA as part of the document it approved and signed on November 21, 2008.

FHWA does not consider the material on the DVD to be part of the approved FEIS. FHWA has directed the Michigan Department of Transportation (MDOT) to remove it from all remaining copies of the FEIS that have not been distributed and to remove it from copies that are currently provided at the repositories. FHWA and MDOT will also inform all FEIS document holders that the DVD is not part of the FEIS.

Authority: 23 CFR 771.117.

Issued on: December 8, 2008.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. E8-29592 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in the State of Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Route (SR)-108 project from SR-127 (Antelope Drive) to SR-126 (1900 West) in the cities of Syracuse, West Point, Clinton, Roy, and West Haven, Utah in the Counties of Davis and Weber, State of Utah. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 15, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118 between the hours of 7:30 a.m. and 5 p.m., (801) 963-0182, or by e-mail at Edward.Woolford@DOT.gov. You may also contact Mr. Randy Jefferies, Utah Department of Transportation, 166 W. Southwell Street, Ogden, Utah 84404, between the hours of 7 a.m. and 6 p.m. Monday through Thursday, (801) 612-4043 or by e-mail at rjefferies@utah.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Utah: State Route (SR)-108 project from SR-127 (Antelope Drive) to SR-126 (1900 West) in the cities of

Syracuse, West Point, Clinton, Roy, and West Haven, in Davis and Weber Counties, Utah (EIS Number: FHWA-UT-EIS-07-03-F).

The 9.5 mile project will construct a five-lane (110-foot) cross-section consisting of four 12-foot travel lanes, a 14-foot median (either a two-way left-turn lane or a raised center median), 8-foot shoulders, 4-foot bicycle lanes, 2.5-foot curb and gutter, 4.5-foot park strips, 4-foot sidewalks, and 1-foot between the back of the sidewalk and the edge of the right-of-way. Improve most intersections with dedicated right-turn and left-turn lanes. Dual left-turn lanes would be provided at 1700 South (southbound only), 1800 North, 5600 South, 4800 South, and 1900 West (eastbound only). Include enough shoulder width to accommodate bus service. Support bicycle use along SR-108 by providing Class II bicycle lanes.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on August 20, 2008, in the FHWA Record of Decision (ROD) issued on October 29, 2008, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting FHWA or the UDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at <http://www.udot.utah.gov/sr108study>, or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. Air: Clean Air Act [42 U.S.C. 7401-7671(q)]. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703-712]. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013]. Social and Economic: Civil

Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209]. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251-1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001-4128. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 9, 2008.

Walter C. Waidelich, Jr.,

Division Administrator, Salt Lake City, Utah.

[FR Doc. E8-29585 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed Mountain View Corridor project in Salt Lake and Utah Counties in the State of Utah. Those actions grant approvals for the project. The project includes both

highway and transit components. FHWA has approval authority over the highway components of the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the FHWA actions on the highway project will be barred unless the claim is filed on or before June 15, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Woolford, Project Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118; telephone: (801) 963-0182; e-mail: Edward.Woolford@dot.gov. The FHWA Utah Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (Mountain Standard Time). You may also contact Ms. Teri Newell, P.E., Utah Department of Transportation, 2010 South 2760 West, Salt Lake City, Utah 84104; telephone: (801) 975-4807.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing approvals for the highway components of the Mountain View Corridor ("MVC") project in Salt Lake and Utah Counties, Utah. At full build-out, the highway components of the MVC project will include a 44 mile limited-access freeway with at-grade separations at all intersecting roadways. It will begin at I-80 in Salt Lake City in Salt Lake County at about 5800 West and continue south connecting to I-15 at 2100 North in the city of Lehi in Utah County. The highway will be constructed on new alignment and will be implemented using a phased approach, which is described in the Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD). The MVC project will also include a transit component on 5600 West in Salt Lake County being sponsored by the Utah Transit Authority; FHWA does not have approval authority over the transit component of the project. The actions by FHWA, and the laws under which such actions were taken, are described in the FEIS, which was approved on September 3, 2008, in the FHWA Record ROD which was issued on November 17, 2008, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Utah Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed

and downloaded from the project Web site at <http://www.udot.utah.gov/mountainview> or viewed at public libraries in the project area.

This notice applies to all FHWA decisions as of the issuance date of this notice and all laws under which such actions were taken. Laws generally applicable to such actions include but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of

Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 9, 2008.

Walter C. Waidelich, Jr.,

Division Administrator, Salt Lake City.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2008–0158]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. Section 327(g) of Title 23, United States Code mandates semiannual audits during each of the first 2 years of State participation to ensure compliance by each State participating in the Pilot Program. This notice announces and solicits comments on the second audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before January 14, 2009.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at <http://www.regulations.gov>, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments

electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202) 366–2034, Ruth.Rentch@dot.gov, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, Michael.Harkins@dot.gov, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web site at <http://www.access.gpo.gov>.

Background

Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) establishing the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

Section 327(g) of Title 23, United States Code, requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation, and annual audits during each subsequent year of State participation to

ensure compliance by each State participating in the Pilot Program. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the second audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Public Law 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on: December 1, 2008.

Thomas J. Madison, Jr.,
Federal Highway Administrator.

Draft Report

Surface Transportation Project Delivery Pilot Program

Federal Highway Administration Audit of California Department of Transportation
July 28–August 1, 2008

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub L. 109–59) section 6005(a) established the Surface Transportation Project Delivery Pilot Program (Pilot Program), codified at title 23, United States Code (U.S.C.), section 327. The Pilot Program allows the Secretary to assign, and the State to assume, the Secretary of Transportation's (Secretary) responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of the Federal Highway Administration (FHWA).

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first two years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audits is to assess a pilot State's compliance with the required Memorandum of Understanding (MOU)¹ and applicable Federal laws and policies, to collect information needed to evaluate the success of the Pilot Program, to evaluate pilot State progress toward achieving its performance measures, and to collect information needed for the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report. This audit report must be made available for public comment, and FHWA must respond to public

comments received no later than 60 days after the date on which the period for public comment closes.

The California Department of Transportation (Caltrans) published its Application for Assumption (Application) under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its application to FHWA on May 21, 2007, and FHWA, after soliciting the views of other Federal agencies, reviewed and approved the application. Then on June 29, 2007, Caltrans and FHWA entered into a MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program will be effective through August 2011 (23 U.S.C. 327(i)(1)).

Scope of the Audit

This is the second FHWA audit of Caltrans' participation in the Pilot Program. The onsite portion of this audit was conducted by the FHWA audit team in California from July 28 through August 1, 2008. As required in SAFETEA–LU, the second audit assessed Caltrans' compliance with the roles and responsibilities it assumed in the MOU and also provided recommendations to assist Caltrans in conducting a successful Pilot Program.

The audit reviewed the following core areas: (1) Program management; (2) legal sufficiency; (3) performance measures; (4) documentation and file management; (5) training; and (6) quality assurance and quality control measurement. Prior to the onsite visits, FHWA conducted telephone interviews with staff in the Caltrans Headquarters (HQ) office and with staff in Federal resource agency regional offices (Environmental Protection Agency, U.S. Corps of Engineers, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration and U.S.D.A. Forest Service) and the California State Historic Preservation Office. The audit included onsite visits to three Caltrans District Offices: District 7 (Los Angeles), District 8 (San Bernardino), and District 11 (San Diego).

Audit Process and Implementation

Each FHWA audit conducted under the Pilot Program is planned to ensure a pilot State's compliance with the commitments in its MOU with FHWA. FHWA does not evaluate specific project-related decisions made by the State because these decisions are the sole responsibility of the pilot State. However, the scope of the FHWA audits does include the review of the processes and procedures used by the pilot State to reach project decisions in compliance with MOU section 3.2.

Also, Caltrans committed in its Application (incorporated by reference in MOU section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the

responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assesses Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program
- Expanded Quality Control Procedures
- Independent Environmental Decisionmaking
- Determining the NEPA Class of Action
- Consultation and Coordination with Resource Agencies
- Issue Identification and Conflict Resolution Procedures
- Recordkeeping and Retention
- Expanded Internal Monitoring and Process Reviews
- Performance Measures to Assess the Pilot Program
- Training to Implement the Pilot Program
- Legal Sufficiency Review.

The FHWA audit team included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review
- FHWA Office of Chief Counsel
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- Volpe National Transportation Systems Center
- Advisory Council on Historic Preservation
- U.S.D.A. Forest Service.

During the onsite audit, FHWA interviewed more than 75 Caltrans staff (from both the Capital and Local Assistance programs) in the 3 District offices and Caltrans' Legal Division staff in each of its 4 offices. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, generalists, associate planners, and technical experts. The audit also included a review of the project files and records for over 30 projects managed under the Pilot Program.

FHWA acknowledges that Caltrans identified specific issues during its second self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and has processes in place to work towards resolving each issue. Some issues described in the Caltrans self-assessment may overlap with FHWA findings in this audit report. This audit report documents findings within the scope of the audit and as of the dates of the onsite portion of the audit.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review the draft audit report. FHWA reviewed the comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Progress Since the Last Audit

As part of the second FHWA audit of the Caltrans' Pilot Program, FHWA verified that Caltrans demonstrated continued compliance in the "Compliant" findings areas identified

¹ Caltrans MOU between FHWA and Caltrans available at: http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.

in the first audit in January 2008. These compliant findings were:

1. *Legal Sufficiency*—Caltrans' Legal Division has developed a consistent process to conduct formal legal sufficiency reviews by attorneys (and has provided basic legal sufficiency training to each reviewing attorney).

2. *Establish Pilot Program Policies and Procedures*—Caltrans currently, in general, complies with MOU section 1.1.2 commitments to establish Pilot Program policy and procedural documentation (as detailed in Caltrans' Application).

3. *Background NEPA Training*—Caltrans' existing Environmental Staff Development Program, outlined in the Application, has processes in place to ensure that Environmental Staff involved in NEPA documentation have the underlying foundational skill sets required in addition to the added skills required to address responsibilities under the Pilot Program.

4. *Training Plan*—Caltrans conducted a training needs assessment specific to the Pilot Program and developed a training plan titled "Caltrans Surface Transportation Project Delivery Pilot Program Training Plan (Oct. 1, 2007)."

5. *Interagency Agreements that Involve Other Agencies as Signatories*—Caltrans complied with MOU section 5.1.5 as it pertains to the National Historic Preservation Act, Section 106 Programmatic Agreement (PA) by completing an addenda to the PA within 6 months after the effective date of the MOU to reflect Caltrans' assignment of authority under the Pilot Program.

6. *State Commitment of Resources*—The initial evaluation of resources to implement the Pilot Program and the assignment of resources, as of the date of the first audit, is compliant with MOU section 4.2.

FHWA also evaluated progress in resolving "Deficient" and "Needs Improvement" audit findings from the first FHWA audit.

- Caltrans addressed "Deficient" audit findings from the January 2008 audit as follows:

(1) *Statement Regarding Assumption of Responsibility*—The required statement regarding assumption of responsibility required by MOU section 3.2.5 appeared on the cover page of each environmental document reviewed in the second audit.

(2) *Records Management*—Caltrans demonstrated progress in the area of records management. The audit team confirmed that project files were present in Districts 7, 8, and 11 as required under the Caltrans Uniform Filing System (UFS). Caltrans is working towards full compliance of the implementation of MOU section 8.3, the Caltrans Application (Section 773.106(b)(3)(i) and (ii)), and the Caltrans Standard Environmental Reference (SER) Chapter 38.

(3) *QA/QC Process*—The audit team observed progress in implementing the Quality Assurance/Quality Control (QA/QC) process for environmental documents developed under the Pilot Program in the following areas:

a. *Completion of the Quality Control Certification forms*—The completion of the Internal and External Quality Control Reviews Certification forms improved based

on FHWA audit team project file reviews completed in Districts 7, 8, and 11 during the second audit.

b. *Peer Reviewer*—In April 2008, Caltrans revised Chapter 38 of the SER to clarify the description of the peer reviewer function for the QA/QC process for environmental documents produced under the Pilot Program. All of the QC forms reviewed by FHWA in Districts 7, 8, and 11 that were prepared after the change to the SER complied with this requirement.

c. *Internal and External Quality Control Reviews*—Caltrans revised the Internal and External QC certification forms and the Environmental Document Preparation and Review Tool (Environmental Document Checklist) to address feedback from Caltrans staff, the initial Caltrans self-assessment, and the January 2008 FHWA audit.

- Caltrans addressed "Needs Improvement" audit findings from the January 2008 audit as follows:

(1) *QA/QC Process Related to SER Chapter 38 Procedural and Policy Changes*—Caltrans has created a new section in the SER, titled "SER Posting History," which presents a chronology of changes made in the SER (*i.e.*, SER chapter changed, date of change, summary of change).

(2) *Self-assessment issues and corrective actions*—The second self-assessment completed by Caltrans correlated each identified issue needing improvement to the corrective action(s) being taken to address each issue.

(3) *QA/QC process implementation and documentation*—Caltrans revised SER Chapter 38 in April 2008 to clarify the QA/QC process requirements, the technical specialist review, the internal peer review, the class of action determination, signature authorities, and the options each District may use to communicate that an environmental document is ready for signature. Through interviews with staff in the four Caltrans Districts (Districts 4, 7, 8, and 11) visited, the audit team determined that the Districts are using some format of a "Ready for Signature" QC form to transmit to the District Deputy Director that the environmental document is ready for signature.

Key Elements of Implementation

One of the purposes of each FHWA audit of a State Pilot Program is to identify and collect information for consideration by potential future Pilot Program participants. Key elements that are being used by Caltrans in the implementation of the Pilot Program include their SER, particularly Chapter 38—NEPA Delegation, Caltrans annotated outlines for environmental documents, quality control certification forms, environmental document review checklists, and monthly NEPA delegation statewide teleconferences.

During the interviews and project file reviews completed in Districts 7, 8, and 11, the audit team observed the following effective practices:

(1) Use of standard "spreadsheet" template to convey the comments of HQ NEPA coordinators on environmental documents to District staff—Through interviews with HQ NEPA coordinators and review of project

files, the audit team observed a systematic mechanism used to communicate comments on environmental documents. The HQ NEPA coordinator consolidates the comments on each environmental document reviewed and provides the comments to the District point of contact via a standard "spreadsheet" template. The template file includes information on each document section, the comment and action needed, and identifies the commenter. The audit team identified records of these communications in project files. This approach provides a systematic and transparent mechanism to transfer and document communications between HQ and District staff on environmental documents.

(2) Use of intranet sites at Districts to access Pilot Program materials and documents—The audit team determined through interviews with staff at Districts 7, 8, and 11 that each of these Districts use an intranet site (not accessible to the public) to post District specific documents related to the Pilot Program. Maintaining an internal system for all users at the District to access the latest District specific Pilot Program documents provides for improved consistency in implementing the Pilot Program.

(3) File transfer as standard operating procedure when transferring projects between staff—The audit team determined through interviews with Caltrans staff that file transfer procedures were in selective use at some Districts visited during the audit, to address employee turnover or the transitioning of projects between staff. File transfer practices include a file transfer meeting where the generalist hands off all documents to the Senior Planner overseeing the individual's work.

Overall Audit Opinion

Based on the information reviewed, it is the FHWA audit team's opinion that to date, Caltrans has been carrying out the responsibilities it has assumed in keeping with the intent of the MOU and the Application. During the onsite audit, Caltrans staff and management continued to indicate ongoing interest in obtaining constructive feedback on successes and areas for improvement. By addressing the findings in this report, Caltrans will continue to move the program toward success.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria (*i.e.*, MOU, Application). The time period covered by this second audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the second onsite audit (August 1, 2008). This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application for Assumption and/or MOU.

- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application for Assumption and/or MOU is not fully implemented to achieve the stated

commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*

- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application for Assumption and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit; or*

Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application for Assumption and/or MOU. *Corrective action is required prior to the next audit.*

Summary of Findings—July 2008

Findings—Compliant

(C1) *Training of Legal Division Staff*—In compliance with MOU section 12.1.1 and section 773.106(b)(3)(iii) of Caltrans' Application, Caltrans' Legal Division maintains a staff of qualified attorneys supporting the Pilot Program and tracks the trainings attended by each attorney. Attorney training is organized into five core areas (Legal Sufficiency, Section 4(f), Section 7 of the Endangered Species Act, Environmental Tools (internal to Caltrans), and Audit). Additionally, the four Assistant Chief Counsels (ACC) with environmental law responsibilities work together to identify additional training opportunities available statewide. Each ACC has approval authority to fund additional training opportunities for attorneys on their team.

(C2) *Conformity Determinations*—Section 8.5 of the MOU requires that FHWA's California Division Office document the project level conformity determination by transmitting a letter to Caltrans to be included in the Final Environmental Impact Statement (EIS) or Environmental Assessment (EA). Based on interviews with Caltrans staff and review of 15 project files, conformity decisions were completed in accordance with MOU section 8.5.

Findings—Needs Improvement

(N1) *Commitment of Resources*—Section 4.2.2 of the MOU requires Caltrans to maintain adequate organizational and staff capability to effectively carry out the responsibilities it has assumed. Interviews with Caltrans District staff working on Capitol Projects revealed that the Work Breakdown Structure (WBS) code established to track actual time spent on Pilot Program activities is not used in a consistent manner. Inconsistent use and understanding of the WBS code to track labor expenditures under the Pilot Program provides inaccurate information on the resources used to support the Pilot Program. Caltrans should continue to clearly define, communicate and emphasize consistent use of the WBS to staff supporting the Capital Projects component of the Pilot Program, which activities to track using the designated WBS code for the Pilot Program.

Interviews with Caltrans District staff working on Local Assistance Projects revealed an inability to track actual time

spent on Pilot Program activities through the use of the Expenditure Authorization system.

Given this two part finding, it is unclear whether Caltrans is able to accurately and fully assess the current and future resource needs for implementation of the Pilot Program.

(N2) *District Training Approaches and Implementation*—MOU section 4.2.2 requires Caltrans to maintain adequate organizational and staff capability to effectively carry out the responsibilities it has assumed under the Pilot Program. A fundamental component of staff capability is maintaining a training program that ensures staff competency to meet Pilot Program responsibilities. The responsibility of identifying individual staff training needs largely falls to managers at the District level. Audit observations in the three Districts visited (Districts 7, 8, and 11) during this audit, along with the one District visited (District 4) during the previous audit, confirmed that considerable variation in training approaches exist between District managers, which can result in potentially widely varying levels of competency among staff. This variation in staff training levels could affect staff competency levels and compliance with commitments under the Pilot Program. As Caltrans HQ and Districts continue to assess and address staff training needs, Caltrans needs to actively monitor how District staff training needs are assessed and demonstrate consistency among and within Districts in the delivery of training in order to achieve a sufficient level of competency among all associated staff. Inconsistencies identified through Caltrans self-assessments and audit findings also serve as a source to identify training needs, including:

(a) Project Files—When to initiate a project file and what information it should contain;

(b) Internal QA/QC Certification Form—Who the reviewers should be and when they should sign the form;

(c) Class of action determinations—What documentation is used, when a determination is required, and who must be involved;

(d) Differentiating between Categorical Exclusions (CE) that fall under section 6004 and section 6005 MOUs between Caltrans and FHWA; and

(e) What approvals and decisions are to be included in quarterly reports on the Pilot Program and at what project stage they are to be reported;

(f) Environmental document transmittals for the legal sufficiency process; and

(g) Environmental document and project file transmittals to transfer projects between staff.

(N3) *Performance Measure Evaluation*—MOU section 10.1.1 requires Caltrans to develop performance measures for the Pilot Program. MOU section 10.1.2 requires FHWA to evaluate these performance measures during the audits and include the evaluation in the audit reports.

FHWA noted the following areas in need of improvement with respect to two Pilot Program performance measures—"Timely Completion of NEPA Process" and "Compliance with NEPA and other Federal laws and regulations."

(a) Performance Measure: Timely Completion of NEPA Process.

(i) Caltrans measures the time to complete the environmental document review and approval process for draft and final documents. While the document review component is one element that Caltrans may use to evaluate performance under the Pilot Program, this performance measure evaluates a relatively minor part of the overall project timeline. In all cases where this current measure is reported, Caltrans needs to provide full disclosure of the limitations of the measure, preferably noting that the time period covered is only a small part of the overall NEPA process. Caltrans should consider expanding this measure to include other elements assumed under the Pilot Program to more robustly evaluate the timely completion of the NEPA process.

(ii) Caltrans uses baseline data to evaluate progress since assuming Pilot Program responsibilities. Thirty-five environmental documents reviewed and approved prior to the effective date of the MOU (34 EAs and 1 EIS) are used to draw from for performance measure purposes. Variables such as project size, scope, and complexity, as well as any required scheduling coordination with resource agencies, could affect the start time of document reviews and as such any comparisons with Pilot Program projects need to consider these factors. The current approach of using the median time from the beginning of the administrative review process for a document to the document approval date, prior to and during the Pilot Program does not provide a realistic or reliable basis of comparison. At a minimum, the metric does not account for the type of document being reviewed or any of the other variables involved in the projects. A more effective representation of project timing would be to compare the timing of projects prior to and during the Pilot Program by document type (*i.e.*, compare EIS projects to EIS projects) and other relevant variables, such as project size, scope and complexity.

(b) Performance Measure: Compliance with NEPA and other Federal laws and regulations (Maintain documented compliance with requirements of all Federal laws and regulations being assumed). Caltrans measures performance by evaluating the percentage of environmental documents (draft and final) with a completed Environmental Document Preparation and Review Tool and Internal Certification Environmental Document Quality Control Reviews form. Caltrans set at the start of the Pilot Program a desired outcome of this performance measure of a 100 percent completion rate. Based on the results of the first two Caltrans self-assessments, the acceptable completion rate was modified to a phased-in approach over a two-year period of time (increasing from 75 percent to 95 percent).

The audit team was unable to identify the basis Caltrans used to modify the acceptable completion rate for this performance measure. As Caltrans is using the completion of the Environmental Document Preparation and Review Tool and Internal Certification Environmental Document Quality Control Reviews form as a method of demonstrating

compliance with NEPA and other Federal laws and regulations, a completion rate of less than 100 percent would not correlate with the demonstration of compliance with assumed responsibilities under the Pilot Program.

For every compliance related performance measure that is not at 100 percent, Caltrans needs to document each item of noncompliance in the project file and correct each deficiency identified.

Caltrans (with FHWA involvement under MOU section 10.1.1) needs to develop an approach to evaluate the effectiveness of each performance measure and to establish a process to communicate changes implemented for each performance measure.

(N4) *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU have not consistently included an accurate listing of all approvals and decisions under the Pilot Program. Quarterly reports received by FHWA have been revised and resubmitted by Caltrans to address reporting data gaps. Audit team review of the content of the quarterly reports and discussions with Caltrans staff who develop input for the quarterly reports suggested that the processes leading to report production is inconsistent in approach to what approvals and decisions are to be reported Caltrans HQ by the District offices. Clear guidance to the Districts is needed on what approvals and decisions are to be reported and at what stage they are to be reported.

(N5) *Varying Understanding of Section 6004/Section 6005 CEs*—Sections 3.1.1 and 3.1.2 of the MOU define the scope of assignment in terms of the Section 6004 MOU (State Assumption of Responsibility for the Categorical Exclusion program, 23 U.S.C. 326). An inconsistent understanding of determinations of Section 6005 versus Section 6004 project applicability was identified from interviews and review of project files during the audit. For each CE, District staff need to understand the purpose, use of Caltrans procedures associated with CEs and consistently complete and maintain in the project file the Categorical Exemption/Categorical Exclusion Determination form and the Categorical Exclusion Checklist.

(N6) *Creating and Maintaining Project File Protocols*—Section 8.2.4 of the MOU requires that Caltrans maintain project files that include all letters and comments received from governmental agencies, the public, and others relating to the Pilot Program responsibilities. In addition, section 8.2.5 of the MOU requires Caltrans to review and monitor project file documentation thorough its QA/QC process. In District 7, 8, and 11, the audit team identified a lack of consistent filing and record keeping procedures related to the storage of electronic communications. Caltrans does not maintain a systematic process and has not established formal directives regarding electronic correspondence and/or documents, a lack which could result in the loss of electronic data.

(N7) *Maintenance of Project and General Administrative Files*—Section 8.2.4 of the MOU requires Caltrans to maintain project and general administrative files pertaining to

its discharge of the responsibilities assumed under the Pilot Program. The audit team identified inconsistencies with established project files maintenance procedures through file reviews conducted during the audit. The following inconsistencies were noted:

- (a) Files with incomplete and/or missing required documentation;
- (b) files missing UFS file tabs;
- (c) electronic correspondence and data not printed and/or located in the project file; and
- (d) project file materials maintained separately from the project file.

Additionally, the audit team identified a lack of direction and consistency among Caltrans staff on what items should be included in the official administrative file. A lack of consistency of filing procedures existed among generalists interviewed during the audit.

(N8) *Establishment of Environmental Project Files*—The audit team observed a lack of clear understanding and inconsistent implementation among Caltrans staff on when to establish environmental project files. SER Chapter 38 “Instructions for Using the UFS” states “Establishing environmental project files based on this UFS as soon as environmental studies begin, and maintaining these files are mandatory.”

(N9) *QA/QC Process Implementation*—The Caltrans QA/QC process developed to comply with section 8.2.5 of the MOU has not been consistently implemented for all projects assumed under the Pilot Program. Caltrans requires that each environmental document be reviewed according to the processes established in the policy memo “Environmental Document Quality Control Program under the NEPA Pilot Program” (July 2, 2007). The audit team identified through interviews with Caltrans staff and through project file reviews that an inconsistent understanding and implementation of the steps in the QA/QC process for environmental documents existed.

The audit identified a general lack of understanding of the purpose of the use of the Internal Certification with respect to its role in the Pilot Program responsibilities assumed. This lack of understanding involves the overall reasoning and logic for the comprehensive progression of authorities of the reviews needed in completion of the certification form. The audit identified a lack of clear understanding among Caltrans staff that the environmental branch chief must be the final signatory. Considering these misunderstandings and the deficient finding (D2) below, the Audit team recommends that Caltrans evaluate the use of the QC Certification Forms to assess whether the intended goals of its use are being met.

Findings—Deficient

(D1) *Performance Measure*—Section 10.1.3 of the MOU requires Caltrans to collect data and monitor its progress in meeting the performance measures in section 10.2 of the MOU, including performance measure 10.2.1(C)(i): “Assess change in communication among Caltrans, Federal and State resource agencies, and the public.” Currently, Caltrans has no metric to evaluate this performance measure.

(D2) *QA/QC Certification Process*—To comply with MOU section 8.2.5 and SER Chapter 38, Caltrans requires staff to review each environmental document in accordance with the policy memo titled “Environmental Document Quality Control Program under the NEPA Pilot Program” (July 2, 2007). The audit team observed the following deficiencies through Caltrans staff interviews and project file reviews:

(a) SER Chapter 38 section, “Quality Control Program,” requires the environmental branch chief’s “quality control review,” to always constitute the last review. In six instances identified by the audit team, the environmental branch chief was not the final reviewer based on the dates indicated on the forms.

(b) The SER Chapter 38 requires that the Caltrans’ independent review of the environmental document not begin until the External QC Certification form has been completed. It was observed in three instances that the completion of the Internal Certification QC form predated the completion of the External Certification QC form.

(D3) *Submission of Environmental Documents for Legal Review*—Three of the four environmental documents the audit team identified as having undergone legal review prior to the July 2008 audit were not submitted in accordance with the procedures specified in the Division of Environmental Affairs (DEA) memorandum dated July 2, 2007, “Environmental Document Quality Control Program under the NEPA Pilot Program” (nor, by reference, the then-operative October 15, 2007, Caltrans Legal Division memorandum, “Procedures for Determining Legal Sufficiency for Environmental Documents under the NEPA Pilot Program”). The procedural deviations identified are as follows:

(a) One NEPA environmental assessment, meeting Caltrans’ criteria for a “Complex EA” per the July 2, 2007, DEA memorandum (public controversy and controversy over project purpose), underwent legal review prior to approval without the program office having provided the reviewing attorney any of the supporting documentation for “Complex EAs” required by the July 2, 2007, and October 15, 2007, memoranda.

(b) Two other transmittals were sent to request the initiation of the formal Legal Sufficiency review without the reviewing attorney having been provided all six items required by the July 2, 2007, and the October 15, 2007, memoranda. In those cases, however, the attorney did eventually receive all required items.

(c) It was observed that a District’s transmittal of a Final EIS for Legal Sufficiency review predated the Environmental Branch Chief’s certification on the Internal Certification form. The SER Chapter 38 requires that the transmittal to the Legal Division will include the completed and signed Internal and External QC certification forms.

(D4) *Environmental Document Process—Class of Action Determinations*—The audit team found an inconsistent understanding and implementation of the process for documentation of class of action

determinations and concurrences. The NEPA process, dictates that the thought process and analysis necessary for the determination of the class of action for a project should be documented as part of the project's record-keeping. Sections 771.111(a) and (b) of Title 23, Code of Federal Regulations discuss the determination and identification of the class of action for a project and to verify compliance with these regulations requires some documentation.

Additionally, Chapter 38 of the SER provides a means of documenting class of action determinations via the Preliminary Environmental Analysis Report for State Highway System projects or via the Preliminary Environmental Study form for Local Assistance projects. The procedures also require class of action determinations for all EAs (including Complex EAs) and EISs to be made with the concurrence of the Headquarters Environmental Coordinator. The SER states that, "obtaining the concurrence of the Headquarters Environmental Coordinator may be done through an e-mail which includes the project description, proposed class of action, and rationale. The Coordinator's e-mail response will provide concurrence."

The audit team observed through project file review in the 3 Districts visited, the process described in the SER was not consistently followed. In more than six instances, project files did not contain any record of a class of action determination or concurrence. This area was cited as *Needs Improvement* in the January 2008 audit. Interviews with Caltrans staff and review of project files showed varying understanding and compliance with the SER and with Caltrans Application section 773.106 (b)(3)(ii) and MOU section 5.1.1 regarding procedural and substantive requirements.

[FR Doc. E8-29628 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Meeting Regarding Applications for SAFETEA-LU Magnetic Levitation Project Selection

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of informational meeting concerning applications for grants to existing magnetic levitation (maglev) projects located east of the Mississippi River.

SUMMARY: On October 16, 2008, the Federal Railroad Administration (FRA) published a Notice of Funds Availability in the **Federal Register**. (FR Vol. 73, No. 201/Thursday October 16, 2008, pg 61449) In that Notice, FRA solicited applications from eligible applicants for \$45 million authorized by section 1307 of the Safe, Accountable,

Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) for preconstruction activities and capital costs of fixed guideway infrastructure of maglev projects east of the Mississippi River. (That notice and this notice do not apply to the maglev project between Las Vegas and Primm, NV.) Based upon the Joint Explanatory Statement of the House Transportation and Infrastructure Committee and the Senate Environmental and Public Works Committee, and the Senate Committee on Commerce, Science and Transportation, Congress explained its intent "to limit the eligible projects to three existing projects east of the Mississippi River: Pittsburgh, Baltimore-Washington, and Atlanta-Chattanooga."

Proponents of eligible projects have requested meetings with FRA to clarify the application requirements. Because of the competitive nature of the application process, FRA will hold an open meeting where interested proponents of any of these three projects might discuss application requirements with FRA, in a forum that will permit proponents of all eligible projects to benefit from these discussions. All questions and responses will be available in summary form on FRA's Web site after the meeting.

DATES: The meeting will be held on Wednesday December 17, 2008, between 9:30 and 11 a.m., in room 7 of the first floor conference center in the west building of the U.S. Department of Transportation headquarters, 1200 New Jersey Ave., SE., Washington, DC 20590. To expedite clearance through building security, persons interested in attending must notify FRA at the point of contact below of their intent to attend by close of business Tuesday, December 16. Persons unable to attend with questions concerning the application process may submit these questions via email to the contact identified below.

To Express Intent to Attend the Meeting, or to Submit Questions to be Addressed at the Meeting, Contact: Rachell Macklin, Office of Railroad Development (RDV-13), Federal Railroad Administration at Rachell.Macklin@dot.gov or by phone at (202) 493-6340 or by fax at (202) 493-6330.

FOR FURTHER INFORMATION CONTACT: Peter Montague, Chief, Program Implementation Division, Office of Railroad Development, Federal Railroad Administration at Peter.Montague@dot.gov or by phone at (202) 493-6381 or by fax at (202) 493-6330.

Issued in Washington, DC, on December 8, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8-29531 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Presidential Memorandum of November 25, 2008; Marine War Risk Insurance Under 46 U.S.C. Ch. 539

On November 25, 2008, President George W. Bush approved the provision of vessel War risk insurance by memorandum for the Secretary of State and the Secretary of Transportation. The text of this memorandum reads:

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and 46 U.S.C. Ch. 539, I hereby:

Approve the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargo and crew) against loss or damage by war risks in the manner and to the extent provided in chapter 539 of title 46, United States Code, for trade in the Black Sea, whenever, after consultation with the Secretary of State, it appears to the Secretary of Transportation that such insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do insurance business in a State of the United States. To the extent individual policies involve an exposure in excess of the amounts available in the War Risk Revolving Fund, such policies may be issued only after consultation with the Office of Management and Budget. This approval to provide insurance or reinsurance is effective for 90 days, except that existing policies shall remain in force pursuant to the terms of these policies. I hereby delegate to the Secretary of Transportation, in consultation with the Secretary of State, the authority vested in me by 46 U.S.C. 53902 and 53905.

The Secretary of Transportation is directed to bring the approval to the immediate attention of all U.S.-flag vessel operators and to arrange for its publication in the **Federal Register**.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8-29536 Filed 12-12-08; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[STB Finance Docket No. 35183]****Genesee & Wyoming Inc.—Control Exemption—Georgia Southwestern Railroad, Inc.****AGENCY:** Surface Transportation Board.**ACTION:** Notice of Exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for Genesee & Wyoming Inc. (GWI), a noncarrier, to acquire indirect control of Georgia Southwestern Railroad, Inc. (GSWR), subject to labor protective conditions. Pursuant to the Stock Purchase Agreement entered into by and among GSW Acquisition Sub Inc. (GSW Sub), GWI, Terry R. Small, and David L. Smoot, GSW Sub will acquire direct control of GSWR, and because GSW Sub is a wholly owned direct subsidiary of GWI, GWI will acquire indirect control of GSWR. GWI is a holding company that directly or indirectly controls one Class II rail carrier, 28 Class III railroads,¹ two limited liability companies, and additional railroads with two wholly owned subsidiaries that are noncarrier holding companies.

DATES: This exemption will be effective on January 14, 2009. Petitions to stay must be filed by December 26, 2008. Petitions to reopen must be filed by January 5, 2009.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 35183, to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423–0001. In addition, send one copy of pleadings to Kevin M. Sheys, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Melissa Ziemicki, (202) 245–0386 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at "<http://www.stb.dot.gov>."

Decided: December 9, 2008.

¹ On October 1, 2008, GWI filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25, in STB Finance Docket No. 35177, *Genesee & Wyoming Inc.—Control Exemption—Aliquippa & Ohio River Railroad Co., et al.*, to acquire control of Summit View, Inc. (Summit View), a noncarrier, and thereby acquire control of 10 additional Class III railroads that are controlled by Summit View.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrely.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E8–29561 Filed 12–12–08; 8:45 am]

BILLING CODE 4915–01–P**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****Release of Waybill Data**

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–11–10/17/08) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E8–29530 Filed 12–12–08; 8:45 am]

BILLING CODE 4915–01–P**DEPARTMENT OF THE TREASURY****Submission for OMB Review; Comment Request**

December 9, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 14, 2009 to be assured of consideration.

Office of Financial Education*OMB Number:* 1505–XXXX.*Type of Review:* New Collection.*Title:* Community Financial Access Pilot Quarterly Report.

Description: Information will be collected on a voluntary basis from financial institutions and financial education providers working with the Department of the Treasury on the Community Financial Access Pilot (Pilot). This information is necessary to assess the effectiveness of the Pilot strategies to expand access to financial services and financial education for low- and moderate-income individuals. The information will allow Treasury to assess the effectiveness of each Pilot site strategy and the Pilot as a whole in expanding financial access and financial education.

Respondents: Businesses and other for-profit institutions, and not-for-profit institutions.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Louisa Quittman, Treasury Office of Financial Education, 1500 Pennsylvania Avenue, Washington, DC 20220, (202) 622–8103.

OMB Reviewer: Nick Fraser (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,*Treasury PRA Clearance Officer.*

[FR Doc. E8–29548 Filed 12–12–08; 8:45 am]

BILLING CODE 4810–25–P**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****Additional Designation of Individuals Pursuant to Executive Order 13224**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three newly designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the three individuals identified in this notice, pursuant to Executive Order 13224, is effective on December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance

Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with

foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 4, 2008, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows:

1. GELOWICZ, Fritz Martin (a.k.a. GEBERT, Markus; a.k.a. GELOWICZ, Abdullah; a.k.a. GELOWICZ, Fritz Martin Abdullah; a.k.a. GELOWITZ, Fritz Martin Abdullah; a.k.a. KONARS, Robert; a.k.a. "BENZL"), Boefinger Weg 20, Ulm 89075, Germany; Eberhardstrasse 70, Ulm 89073, Germany; DOB 1 Sep 1979; alt. DOB 10 Apr 1979; POB Munich, Germany; alt. POB Liege, Belgium; citizen Germany; Passport 7020069907 (Germany); Personal ID Card 7020783883; currently incarcerated at Stuttgart-Stammheim, Germany (individual) [SDGT].
2. SCHNEIDER, Daniel Martin (a.k.a. SCHNEIDER, Martin Daniel), Petrusstrasse 32, Herrensohr Dudweiler, Saarbruecken 66125, Germany; zum Gruethlingsstollen 1A, Friedrichstahl 66299, Germany; Rosenstrasse 2, Friedrichstahl 66299, Germany; DOB 9 Sep 1985; POB Neunkirchen, Germany; citizen Germany; Federal ID Card 2318229333; Passport 2318047793 (Germany); currently incarcerated at Schwalmstadt, Germany (individual) [SDGT].
3. YILMAZ, Adem, Sudliche Ringstrasse 133, Langen 63225, Germany; DOB 4 Nov 1978; alt. DOB 11 Apr 1978; POB Bayburt, Turkey; citizen Turkey; Passport TR-P 614166 (Turkey); alt. Passport 0018850 (Turkey); currently incarcerated at Weiterstadt, Germany (individual) [SDGT].

Dated: December 4, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8-29596 Filed 12-12-08; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0386]

Proposed Information Collection (Interest Rate Reduction Refinancing Loan Worksheet) Activity: Comment Request

AGENCY: Veterans Benefits

Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether lenders computed the loan amount on interest rate reduction refinancing loans properly.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2009.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov> or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0386" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26-8923.

OMB Control Number: 2900-0386.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26-8923, to request a guaranty on all interest rate reduction refinancing loan and provide a receipt as proof that the funding fee was paid or evidence that a claimant was exempt from such fee. VA uses the data collected to ensure lenders computed the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans correctly.

Affected Public: Business or other for profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29577 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0132]

Agency Information Collection (Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 14, 2009.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0132" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7485, FAX (202) 273-0443 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0132."

SUPPLEMENTARY INFORMATION:

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26-4555.

OMB Control Number: 2900-0132.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA Form 26-4555 to apply for assistance in acquiring specially adapted housing or the special home adaptation grant. VA uses the data collected to determine the veteran's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2008, at page 57731.

Affected Public: Individuals or households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29575 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0679]

Proposed Information Collection (Certification of Change or Correction of Name); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to change or correct an insured claimant's name.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0679 in any correspondence. During the comment period, comments may be viewed online through FDMS at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Change or Correction of Name, VA Form 29-586.

OMB Control Number: 2900-0679.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29-586 to certify a change or correction to their name on Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per

Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29576 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0128]

Proposed Information Collection (Notice of Lapse—Government Life Insurance); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of a currently approved collection, and allow 60 days for public comment in response to this notice.

This notice solicits comments on information needed to determine claimants' eligibility to reinstate lapsed Government Life Insurance policy.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0128 in any correspondence. During the comment period, comments may be viewed online through FDMS at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Notice of Lapse—Government Life Insurance, VA Form 29-389.

b. Application for Reinstatement, VA Form 29-389-1.

OMB Control Number: 2900-0128.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29-389 and 29-389-1 are used to inform claimants that their government life insurance has lapsed or will lapse due to non payment of premiums. The claimant must complete the application to reinstate the

insurance and to elect to pay the past due premiums. VA uses the data collected to determine the claimant's eligibility for reinstatement of such insurance.

Affected Public: Individuals or Households.

Estimated Annual Burden:

a. VA Form 29-389—3,399 hours.

b. VA Form 29-389-1—1,060 hours.

Estimated Average Burden per

Respondent:

a. VA Form 29-389—12 minutes.

b. VA Form 29-389-1—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29-389—16,993.

b. VA Form 29-389-1—6,359.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29581 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0381]

Agency Information Collection (Report Transfer of Custody Event) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2009.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0381" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420, (202) 461-7485, FAX (202) 273-0443 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0381."

SUPPLEMENTARY INFORMATION:

Title: Report Transfer of Custody Event, VA Form 26-8903.

OMB Control Number: 2900-0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-8903 serves four purposes: holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. The form provides holders, who elected to convey properties to VA, with a convenient and uniform way of notifying VA regarding foreclosed GI home loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2008, at page 57730.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 15,000.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29574 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0073]

Proposed Information Collection (VA Enrollment Certification) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the amount of educational benefits payable to claimants pursuing approved programs of education.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 13, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0073" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 461-9769 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of

Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Enrollment Certification, VA Form 22-1999.

OMB Control Number: 2900-0073.

Type of Review: Extension of a currently approved collection.

Abstract: School officials and employers complete VA Form 22-1999 to report and certify a claimant's enrollment in an educational program. The data is used to determine the amount of benefits payable and whether the claimant requested an advanced or accelerated payment.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden:

a. Electronically—104,262 hours.

b. Paper copy—55,855 hours.

Estimated Average Burden per Respondent:

c. Electronically—8 minutes.

d. Paper copy—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Electronically—781,967.

b. Paper copy—335,129.

Dated: December 4, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8-29583 Filed 12-12-08; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Monday,
December 15, 2008**

Part II

Securities and Exchange Commission

17 CFR Part 240

**Amendment to Municipal Securities
Disclosure; Rule**

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 240**

[Release No. 34-59062; File No. S7-21-08]

RIN 3235-AK20

Amendment to Municipal Securities Disclosure**AGENCY:** Securities and Exchange Commission.**ACTION:** Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to a rule under the Securities Exchange Act of 1934 ("Exchange Act") relating to municipal securities disclosure. This final rule amends certain requirements regarding the information that the broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide. Specifically, the amendments require the broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed: To provide the information covered by the written agreement to the Municipal Securities Rulemaking Board ("MSRB" or "Board"), instead of to multiple nationally recognized municipal securities information repositories ("NRMSIRs") and state information depositories ("SIDs"); and to provide such information in an electronic format and accompanied by identifying information as prescribed by the MSRB. The Commission's rulemaking is intended to improve the availability of information about municipal securities to investors, market professionals, and the public generally. Concurrently, we have approved a companion proposal by the MSRB relating to its Electronic Municipal Market Access ("EMMA") system for municipal securities disclosures. Finally, we are withdrawing proposed amendments to the Rule, issued in 2006, that would have eliminated the MSRB as a location to which issuers could submit certain municipal disclosure documents.

DATES: *Effective Date:* July 1, 2009.**FOR FURTHER INFORMATION CONTACT:**

Martha Mahan Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551-5681; Nancy J. Burke-Sanow, Assistant Director, Office of Market Supervision, at (202) 551-

5620; Mary N. Simpkins, Senior Special Counsel, Office of Municipal Securities, at (202) 551-5683; Rahman J. Harrison, Special Counsel, Office of Market Supervision, at (202) 551-5663; David J. Micehl, Special Counsel, Office of Market Supervision, at (202) 551-5627; and Steven Varholik, Attorney, Office of Market Supervision, at (202) 551-5615, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 15c2-12¹ under the Exchange Act.²

I. Executive Summary

On August 7, 2008, the Commission published for comment amendments to Rule 15c2-12 to provide for a single centralized repository for the electronic collection and availability of information about municipal securities outstanding in the secondary market.³ The comment period for the proposed amendments expired on September 22, 2008. The proposed amendments would require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (1) Solely to the MSRB; and (2) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. We received twenty-three comment letters in response to our proposed amendments from a wide range of commenters.⁴ The respondents included an issuer; a mutual fund complex; NRMSIRs; SIDs; the MSRB; trade organizations representing broker-dealers, investment advisors, financial analysts, government financial officials, and bond lawyers; and individual investors. The majority of commenters supported the proposed amendments and believed that the Commission's proposal would help improve disclosure for municipal securities, protect investors, restore confidence in the market, assist investors in making informed investment decisions, and make it easier for issuers and other

obligated persons to comply with their continuing disclosure agreements. Of the comment letters we received, twenty expressed their support of the proposed amendments,⁵ two NRMSIRs opposed the amendments⁶ and one commenter neither expressed its support of nor opposition to the proposed amendments.⁷ In addition, a number of commenters offered suggestions relating to the implementation and operation of the proposed disclosure system.⁸

In general, commenters supported the use of a single repository for receiving continuing disclosures and believed that such an arrangement would be more efficient than the current decentralized system.⁹ Commenters generally expressed their support for the MSRB as the single repository and believed that the MSRB would be a logical operator of the proposed disclosure system.¹⁰ Commenters also expressed their support for the use of an entirely electronic format for submissions to the single repository, with some commenters stating that paper copies should not be permitted.¹¹ In addition, commenters supported the indexing of information to be submitted to the single repository but had a variety of opinions on the scope of the information to be included in such indexing.¹² Some commenters expressed concern about access to information submitted to the single repository and the fees that could result from the use of such repository,¹³ with

⁵ See Busby Letter, GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, NABL Letter, IAA Letter, Treasurer of the State of Connecticut Letter, e-certus Letter, Texas MAC Letter, NASACT Letter, OMAC Letter, ICI Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, EDGAR Online Letter, Dickman Letter, Mooney Letter, Grant Letter.

⁶ See SPSE Letter and DPC DATA Letter.

⁷ See DAC Letter.

⁸ See, e.g., GFOA Letter, NABL Letter, IAA Letter, e-certus Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, and EDGAR Online Letter.

⁹ See, e.g., OMAC Letter, NFMA Letter, and Treasurer of the State of Connecticut Letter.

¹⁰ See, e.g., GFOA Letter, Vanguard Letter, SIFMA Letter, NASACT Letter, ICI Letter, and NFMA Letter.

¹¹ See, e.g., Vanguard Letter, at 3, and Multiple-Markets Letter, at 2.

¹² See, e.g., GFOA Letter, Vanguard Letter, ICI Letter, OMAC Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, Edgar Online Letter, and DAC Letter. Neither the proposed nor the final Rule 15c2-12 amendments address the specific information to be indexed. Indexing information is addressed in the MSRB's proposed rule change and the Commission's approval order relating to the EMMA system and is considered separately. See Securities Exchange Act Release Nos. 58256 (July 30, 2008), 73 FR 46161 (August 7, 2008) (SR-MSRB-2008-05) ("MSRB EMMA Proposal") and 59061 (December 5, 2008) (order approving MSRB EMMA Proposal) ("MSRB Approval Order").

¹³ See, e.g., NFMA Letter, GFOA Letter, Vanguard Letter, IAA Letter, ICI Letter, and SPSE Letter.

¹ 17 CFR 240.15c2-12.

² 15 U.S.C. 78a *et seq.*

³ See Securities Exchange Act Release No. 58255 (July 30, 2008), 73 FR 46138 (August 7, 2008) ("Proposing Release").

⁴ Exhibit A, which is attached to this release, contains the full title of each comment letter cited herein and the citation key for these letters. Copies of all comments received on the proposed amendments are available on the Commission's Internet Web site, located at <http://www.sec.gov/comments/s7-21-08/s72108.shtml>, and in the Commission's Public Reference Room at its Washington, DC headquarters.

some commenters opposing a system that would impose fees on issuers, obligated persons or investors.¹⁴ One commenter believed that the exemptive provision in paragraph (d)(2) of the Rule, which generally is used by smaller issuers, should be retained in its current form.¹⁵ A number of comment letters addressed both the proposed amendments and the MSRB's companion proposal to establish a continuing disclosure service within its EMMA system.¹⁶ This release describes and addresses only those portions of the comment letters that are relevant to the proposed amendments; the portions of the comment letters pertaining to the continuing disclosure component of the MSRB's EMMA system are considered separately in the Commission's order approving the MSRB's proposal, which we also are issuing today.¹⁷

We have carefully considered all the comments we received regarding the proposed amendments and, as discussed below, are adopting the amendments, as proposed. In adopting these amendments, we are furthering our intent to deter fraud and manipulation in the municipal securities market by improving the availability of information about municipal securities outstanding in the secondary market.

II. Background

A. History of Rule 15c2-12

We have long been concerned with improving the quality, timing, and dissemination of disclosure in the municipal securities markets. In an effort to improve the transparency of the municipal securities market, in 1989, we adopted Rule 15c2-12 ("Rule" or "Rule 15c2-12") and an accompanying interpretation modifying a previously published interpretation of the legal obligations of underwriters of municipal securities.¹⁸ At the time of its adoption in 1989, Rule 15c2-12 required, and still requires, an underwriter acting in a primary offering of municipal securities of \$1,000,000 or more: (1) To obtain and review an official statement "deemed final" by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy

of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB.¹⁹

While the availability of primary offering disclosure significantly improved following the adoption of Rule 15c2-12, there was a continuing concern about the adequacy of disclosure in the secondary market.²⁰ To enhance the quality, timing, and dissemination of disclosure in the secondary municipal securities market, in 1994 we adopted amendments to Rule 15c2-12.²¹ Among other things, the 1994 Amendments placed certain requirements on brokers, dealers, and municipal securities dealers ("Dealers" or, when used in connection with primary offerings, "Participating Underwriters"). In adopting the 1994 Amendments, we intended "to deter fraud and manipulation in the

municipal securities market" by prohibiting the underwriting and subsequent recommendation of transactions in municipal securities for which adequate information was not available on an ongoing basis.²²

Specifically, under the 1994 Amendments, Participating Underwriters are prohibited, subject to certain exemptions, from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer of municipal securities or an obligated person²³ has undertaken in a written agreement or contract for the benefit of holders of such securities ("continuing disclosure agreement") to provide specified annual information and event notices to certain information repositories. The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements ("annual filings");²⁴ (2) notices of the occurrence of any of eleven specific events ("material event notices");²⁵ and (3) notices of the failure of an issuer or other obligated person to make a submission required by a continuing disclosure agreement ("failure to file notices").²⁶ The 1994 Amendments require the Participating Underwriter to reasonably determine that an issuer of municipal securities or an obligated person has undertaken in the continuing disclosure agreement to provide: (1) Annual filings to each NRMSIR; (2) material event notices and failure to file notices either to each NRMSIR or to the

¹⁹ 17 CFR 240.15c2-12.

²⁰ In 1993, the Commission's Division of Market Regulation (n/k/a the Division of Trading and Markets) conducted a comprehensive review of many aspects of the municipal securities market, including secondary market disclosure ("1993 Staff Report"). Findings in the 1993 Staff Report highlighted the need for improved disclosure practices in both the primary and secondary municipal securities markets. The 1993 Staff Report found that investors need sufficient current information about issuers and significant obligors to better protect themselves from fraud and manipulation, to better evaluate offering prices, to decide which municipal securities to buy, and to decide when to sell. Moreover, the 1993 Staff Report found that the growing participation of individuals as both direct and indirect purchasers of municipal securities underscored the need for sound recommendations by brokers, dealers, and municipal securities dealers. See Securities and Exchange Commission, Division of Market Regulation (n/k/a Division of Trading and Markets), *Staff Report on the Municipal Securities Market* (September 1993) (available at <http://www.sec.gov/info/municipal.shtml>).

²¹ See Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) ("1994 Amendments").

In light of the growing volume of municipal securities offerings, as well as the growing ownership of municipal securities by individual investors, in March 1994, the Commission published the *Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others*. See Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994). The Commission intended that its statement of views with respect to disclosures under the federal securities laws in the municipal market would encourage and expedite the ongoing efforts by market participants to improve disclosure practices, particularly in the secondary market, and to assist market participants in meeting their obligations under the antifraud provisions. *Id.*

²² See 1994 Amendments, *supra* note 21.

²³ Obligated persons include persons, including the issuer, committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities to be sold in an offering. See 17 CFR 240.15c2-12(f)(10).

²⁴ 17 CFR 240.15c2-12(b)(5)(i)(A) and (B).

²⁵ 17 CFR 240.15c2-12(b)(5)(i)(C). The following events, if material, require notice: (1) Principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; and (11) rating changes.

In addition, Rule 15c2-12(d)(2) provides an exemption from the application of paragraph (b)(5) of the Rule with respect to primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation, including sending certain material event notices to each NRMSIR or the MSRB, as well as the appropriate SID. See 17 CFR 240.15c2-12(d)(2).

²⁶ 17 CFR 240.15c2-12(b)(5)(i)(D). Annual filings, material event notices, and failure to file notices are referred to collectively herein as "continuing disclosure documents."

¹⁴ See, e.g., GFOA Letter, Vanguard Letter, IAA Letter, ICI Letter, and NAHEFFA Letter.

¹⁵ See NABL Letter, at 2.

¹⁶ See MSRB EMMA Proposal, *supra* note 12.

¹⁷ See MSRB Approval Order, *supra* note 12.

¹⁸ See Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) ("1989 Adopting Release").

MSRB; and (3) in the case of states that established SIDs, all continuing disclosure documents to the appropriate SID. Finally, the 1994 Amendments revise the definition of “final official statement” to include a description of the issuer’s or obligated person’s continuing disclosure undertakings for the securities being offered, and of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with undertakings in previous continuing disclosure agreements.

B. Disclosure Practices in the Secondary Market and Need for Improved Availability to Continuing Disclosure

Since the adoption of Rule 15c2–12 in 1989 and its subsequent amendment in 1994, the size of the municipal securities market has grown considerably.²⁷ There were over \$2.6 trillion of municipal securities outstanding at the end of 2007.²⁸ Notably, at the end of 2007, retail investors held approximately 35% of outstanding municipal securities directly and up to another 36% indirectly through money market funds, mutual funds, and closed end funds.²⁹ There is also substantial trading volume in the municipal securities market. According to the MSRB, more than \$6.6 trillion of long and short term municipal securities were traded in 2007 in more than 9 million transactions.³⁰ Further, the municipal securities market is extremely diverse, with more than 50,000 state and local issuers of these securities.³¹

Currently, there are four NRMSIRs³² and three SIDs.³³ Each of the NRMSIRs utilizes the information obtained from continuing disclosure documents to create proprietary information products that are primarily sold to and used by dealers, institutional investors and other

market participants who subscribe to such products. With respect to the availability of municipal securities information to retail investors, each of the NRMSIRs also makes continuing disclosure documents available for sale to non-subscribers.³⁴

Although the existing practice for the collection and availability of municipal securities disclosures has substantially improved the availability of information to the market, we believe that improvements could achieve more efficient, effective, and wider availability of municipal securities information to market participants.³⁵ Among other things, improvements in information availability may allow investors to obtain information more readily and may help them to make more informed investment decisions. Specifically, we believe that municipal securities disclosure documents should be made more readily and more promptly available to the public and that all investors should have better access to important market information that may affect the price of a municipal security, such as information in financial statements and notices regarding defaults and changes in ratings, credit enhancement provider, and tax status.

Furthermore, we believe that improved access to the information in continuing disclosure documents not only would provide the investing public

with important information regarding municipal securities, both during offerings and on an ongoing basis, but also would help fulfill the regulatory and information needs of municipal market participants, including Dealers, Participating Underwriters, mutual funds, and others. For example, many mutual funds include municipal securities in their portfolios that they routinely monitor for regulatory and other reasons.³⁶ They do so by reviewing annual filings, as well as material event notices and failure to file notices, obtained from NRMSIRs and SIDs.³⁷ In addition, the MSRB requires Dealers to disclose to a customer at the time of trade all material facts about a transaction known by the Dealer.³⁸ Further, the MSRB requires a Dealer to disclose material facts about a security when such facts are reasonably accessible to the market.³⁹ Accordingly, a Dealer is responsible for disclosing to a customer any material fact concerning a municipal security transaction made publicly available through sources such as NRMSIRs, the MSRB’s Municipal Securities Information Library (“MSIL”) system,⁴⁰ the MSRB’s Real-Time Transaction Reporting System (“RTRS”), rating agency reports and

³⁶ For example, Rule 2a–7 under the Investment Company Act of 1940 specifies the characteristics of investments that may be purchased and held by money market funds. Among other requirements, Rule 2a–7 requires a money market fund to limit its portfolio investments to those securities that the fund’s board of directors determines present minimal credit risks (including factors in addition to any assigned rating). See Rule 2a–7(c)(3), 17 CFR 270.2a–7(c)(3).

³⁷ See, e.g., the comments of Leslie Richards-Yellen, Principal, The Vanguard Group, at the 2001 Roundtable, *supra* note 35.

³⁸ See MSRB “Interpretive Notice Regarding Rule G–17 on Disclosure of Material Facts” (March 20, 2002) (available at <http://www.msrb.org/msrb1/rules/notg17.htm>). See also Securities Exchange Act Release No. 45591 (March 18, 2002), 67 FR 13673 (March 25, 2002) (SR–MSRB–2002–01) (order approving MSRB’s proposed interpretation of the duty to deal fairly set forth in MSRB Rule G–17).

³⁹ *Id.*

⁴⁰ Municipal Securities Information Library and MSIL are registered trademarks of the MSRB. The Official Statement and Advance Refunding Document (“OS/ARD”) system of the MSIL system was initially approved by the Commission in 1991 and was amended in 2001 to establish the MSRB’s current optional electronic system for underwriters to submit official statements and advance refunding documents. See Securities Exchange Act Release Nos. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991) (File No. SR–MSRB–90–2) (order approving MSRB’s proposal to establish and operate the OS/ARD of the MSIL system, through which information collected pursuant to MSRB Rule G–36 would be made available electronically to market participants and information vendors) and 44643 (August 1, 2001), 66 FR 42243 (August 10, 2001) (File No. SR–MSRB–2001–03) (order approving MSRB’s proposal to amend the OS/ARD system to establish an optional procedure for electronic submissions of required materials under MSRB Rule G–36).

²⁷ According to statistics assembled by SIFMA, the amount of outstanding municipal securities grew from \$1.2616 trillion in 1996 to \$2.617.4 trillion at the end of 2007. See SIFMA “Outstanding U.S. Bond Market Debt” (available at http://www.sifma.org/research/pdf/Overall_Outstanding.pdf).

²⁸ See SIFMA “Outstanding U.S. Bond Market Debt” (available at http://www.sifma.org/research/pdf/Overall_Outstanding.pdf).

²⁹ See SIFMA “Holders of U.S. Municipal Securities” (available at http://www.sifma.org/research/pdf/Holders_Municipal_Securities.pdf).

³⁰ See MSRB’s Real-Time Transaction Reporting Statistical Information, Monthly Summaries 2007 (available at http://www.msrb.org/msrb1/TRSweb/MarketStats/statistical_patterns_in_the_muni.htm).

³¹ See Securities Exchange Act Release No. 33741, *supra* note 21.

³² The four NRMSIRs are the Bloomberg Municipal Repository, DPC DATA, Interactive Data Pricing and Reference Data, Inc., and SPSE.

³³ The three SIDs are the Municipal Advisory Council of Michigan, Texas MAC, and OMAC.

³⁴ See <http://www.bloomberg.com/markets/rates/municontacts.html> (Bloomberg Municipal Repository); <http://www.munifilings.com/help/help.cfm> (DPC DATA); http://www.interactivedata-prd.com/07company_info/about_us/MN/NRMSIR.shtml (Interactive Data Pricing and Reference Data, Inc.); and <http://www.disclosuredirectory.standardandpoors.com/SPSE>.

³⁵ The Commission notes that the aspects of the Rule that relate to the provision of continuing disclosure documents to multiple locations (*i.e.*, to each NRMSIR and SID) may have engendered certain inefficiencies in the current system. See 17 CFR 240.15c2–12(b)(5)(i)(A) through (D). For instance, there have been reports that NRMSIRs may not receive continuing disclosure documents concurrently, resulting in the uneven availability of documents from the various NRMSIRs for some period of time. There also have been reports of inconsistent document collections among NRMSIRs, possibly due to the failure of some issuers or obligated persons to provide continuing disclosure documents to each NRMSIR. Finally, there have been reports indicating possible weaknesses in document retrieval at the NRMSIRs. See, e.g., Troy L. Kilpatrick and Antonio Portuondo, *Is This the Last Chance for the Muni Industry to Self-Regulate?*, The Bond Buyer, August 6, 2007, and comments made at the 2001 Municipal Market Roundtable—“Secondary Market Disclosure for the 21st Century” held November 14, 2001 (“2001 Roundtable”), and the 2000 Municipal Market Roundtable held October 12, 2000 (available at <http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm> and <http://www.sec.gov/info/municipal/roundtables/2000participants.htm>, respectively).

other sources of information relating to the municipal securities transaction generally used by Dealers that affect transactions in the type of municipal securities at issue.⁴¹ Dealers use the information contained in the continuing disclosure documents to carry out these obligations. Therefore, improving access to information in the continuing disclosure documents would help facilitate and simplify the process of gathering the necessary information to carry out their obligations. For these reasons, we proposed, and are now adopting, amendments to Rule 15c2–12 that, in our view, will provide municipal market participants with more efficient access to information in continuing disclosure documents to satisfy their regulatory requirements and informational needs.

C. The MSRB's Electronic Systems

In 2006, the Commission published for comment proposed amendments to Rule 15c2–12 in response to a petition from the MSRB⁴² that would permit the MSRB to close its Continuing Disclosure Information Net (“CDINet”) system, thereby eliminating the MSRB as a location to which issuers could submit material event notices and failure to file notices.⁴³ In the 2006 Proposed Amendments, we indicated our belief that, given the limited usage of the MSRB's CDINet system, among other things, the proposed elimination of the provision in Rule 15c2–12 that allows the filing of material event notices with the MSRB was warranted.⁴⁴

We recently approved the MSRB's proposed rule change, filed under section 19(b) of the Exchange Act,⁴⁵ to establish a pilot program for an Internet-based public access portal (“pilot portal”) for the consolidated availability of primary offering information about municipal securities that currently is made available in paper form, subject to copying charges, at the MSRB's public access facility, and electronically by

paid subscription on a daily over-night basis and by purchase of annual back-log collections.⁴⁶ The MSRB has implemented the pilot portal as a service of its new Internet-based public access system, which it designated as the EMMA system, as a pilot facility within the MSIL system.

In the course of developing the primary offering information component of the EMMA system, the MSRB determined that it could incorporate in the EMMA system the collection and availability of continuing disclosure documents, thus eliminating the need for the Commission to adopt its proposed changes to Rule 15c2–12 to remove the MSRB as a repository of material event notices.⁴⁷ As a result, the MSRB submitted to the Commission a proposed rule change, filed under section 19(b) of the Exchange Act,⁴⁸ to expand the EMMA system to accommodate the collection and availability of annual filings, material event notices and failure to file notices.⁴⁹ We published the MSRB's proposal to incorporate continuing disclosure documents in the EMMA system simultaneously with the proposed amendments to Rule 15c2–12 that we are adopting today.⁵⁰ While the MSRB still intends to propose to terminate its CDINet System, subject to Commission approval,⁵¹ the MSRB's subsequent decision to file a proposed rule change to expand the EMMA system to accommodate annual filings, material event notices, and failure to file notices⁵² has led it to withdraw the MSRB Petition.⁵³ In the Proposing Release, we noted that, in light of our most recent proposed amendments, we were considering whether to withdraw our 2006 Proposed Amendments.⁵⁴ We received no comments regarding our proposed withdrawal of the 2006 Proposed Amendments. Therefore, in conjunction with the Commission's proposal today to amend Rule 15c2–12,

the Commission is withdrawing its 2006 Proposed Amendments.

III. Discussion of Amendments and Comments Received

A. Amendments to Rule 15c2–12

We are adopting, without change, our proposed amendments to the Rule, which facilitate the collection and availability of information about outstanding municipal securities. For the reasons discussed in this release and the Proposing Release, we believe that the amendments are consistent with the Commission's mandate to, among other things, adopt rules reasonably designed to prevent fraud in the municipal securities market.

In summary, we are amending paragraph (b)(5) of Rule 15c2–12, which relates to a Participating Underwriter's obligation under the Rule to reasonably determine that issuers or obligated persons have contractually agreed to provide specified documents, in connection with primary offerings subject to the Rule. The final amendments require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed at the time of a primary offering: (1) To provide the continuing disclosure documents to the MSRB instead of to each NRMSIR and the appropriate SID, if any; and (2) to provide the continuing disclosure documents in an electronic format and accompanied by identifying information as prescribed by the MSRB.⁵⁵ In addition, the final amendments make comparable changes to paragraph (d)(2) of the Rule, which provides for a limited exemption from Rule 15c2–12(b)(5) as long as specified conditions are met. We also are making revisions to other provisions of Rule 15c2–12 to reflect that the MSRB will be the sole repository and we are providing for a transition mechanism to accommodate existing continuing disclosure agreements that refer to NRMSIRs. As noted above, the rule amendments as adopted are identical to the proposed amendments.

1. Use of a Single Repository

We are adopting amendments to Rule 15c2–12 to provide for a single centralized repository that will receive submissions in an electronic format. These amendments are expected to encourage a more efficient and effective process for the submission and availability of continuing disclosure

⁴¹ See *supra* note 38.

⁴² See Letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, Commission, dated September 8, 2005 (“MSRB Petition”) (File No. 4–508).

⁴³ See Securities Exchange Act Release No. 54863 (December 4, 2006), 71 FR 71109 (December 8, 2006) (“2006 Proposed Amendments”). According to the MSRB Petition, the CDINet system was designed to permit issuers to satisfy their undertakings to provide material event notices through a single submission to the MSRB, rather than through separate submissions to each of the NRMSIRs. The MSRB stated that relatively few issuers had opted to use the CDINet system, and, in recent years, usage of the CDINet system had diminished. See MSRB Petition, *supra* note 42.

⁴⁴ See 2006 Proposed Amendments, *supra* note 43.

⁴⁵ 15 U.S.C. 78s(b).

⁴⁶ See Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (order approving the pilot portal). Primary offering information consists of the official statement and the advance refunding document that Participating Underwriters are required to send to the MSRB under MSRB Rule G-36.

⁴⁷ See MSRB EMMA Proposal, *supra* note 12.

⁴⁸ 15 U.S.C. 78s(b).

⁴⁹ See MSRB EMMA Proposal, *supra* note 12.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See letter to Florence E. Harmon, Acting Secretary, Commission, from Ernesto A. Lanza, General Counsel, MSRB, dated October 22, 2008.

⁵⁴ See Proposing Release, *supra* note 3, 73 FR at 46141.

⁵⁵ We note that, as part of its EMMA proposal filed with the Commission under Section 19(b) of the Exchange Act, the MSRB set forth the electronic format it proposes to use. See MSRB EMMA Proposal, *supra* note 12.

documents. In our view, a single repository that receives submissions electronically should assist in facilitating and simplifying the process of submitting continuing disclosure documents under the Rule. Issuers and obligated persons will be able to comply with their undertakings by submitting their continuing disclosure documents only to one repository, as opposed to multiple repositories.

We also believe that having a centralized repository that receives submissions in an electronic format will help provide ready and prompt access to continuing disclosure documents by investors and other municipal securities market participants. Rather than having to approach multiple locations, investors and other market participants will be able to go solely to one location to retrieve continuing disclosure documents, thereby allowing for a more convenient means to obtain such information. Moreover, we believe that having one repository electronically collect and make available all continuing disclosure documents will increase the likelihood that investors and other market participants will obtain complete information about a municipal security or its issuer, since the information will not be distributed across multiple repositories. In addition, we expect that the consistent availability of municipal secondary market disclosures from a single source can simplify compliance with regulatory requirements by Participating Underwriters and others, such as mutual funds and Dealers. Information vendors (including NRMSIRs and SIDs) and others also will have ready access to continuing disclosure documents from a single source for use in their value-added products.

We have long been interested in improving the availability of disclosure in the municipal securities market. At the time we adopted Rule 15c2-12 and amended it in 1994, disclosure documents were submitted in paper form. We believed that, in such an environment where document retrieval would be handled manually, the establishment of one or more repositories could be beneficial in widening the retrieval and availability of information in the secondary market, since the public could obtain the disclosure documents from multiple locations. Our objective of encouraging greater availability of municipal securities information remains unchanged. However, as indicated above, there have been significant inefficiencies in the current use of multiple repositories that likely have impacted the public's ability to retrieve

continuing disclosure documents.⁵⁶ Although in the 1989 Adopting Release we supported the development of an information linkage among the repositories, none was established to help broaden the availability of the disclosure information. Since the adoption of the 1994 Amendments, there have been significant advancements in technology and information systems, including the use of the Internet, to provide information quickly and inexpensively to market participants and investors. In this regard, we believe that the use of a single repository to receive, in an electronic format, and make available continuing disclosure documents, in an electronic format, will substantially and effectively increase the availability of information about municipal issues, thereby preventing fraud, and enhance the efficiency of the secondary trading market.

In the Proposing Release, we requested comment on whether we should amend Rule 15c2-12 as proposed, or whether it would be preferable to continue to have multiple sources for such information. In addition, with respect to the transition to a sole repository for continuing disclosure documents, we requested comment on whether commenters foresee any differences that could occur between the existing structure of multiple NRMSIRs and one repository regarding the scope, quantity, and continuity of information.

Many commenters supported amending the Rule to provide for only one repository instead of multiple repositories for the submission of, and access to, continuing disclosure documents.⁵⁷ Generally, commenters expressed the view that the creation of a single repository would be a significant step forward in making municipal disclosure more transparent in its scope,⁵⁸ more efficient in its delivery,⁵⁹ more consistent⁶⁰ and comparable⁶¹ across issuers, and more

accessible for investors,⁶² particularly individual investors, and others—enhancing the overall efficiency of the secondary trading market for municipal securities.⁶³ As discussed below, two commenters objected to the establishment of a single repository.⁶⁴

In response to our question about whether having one repository instead of multiple repositories for the submission of, and access to, continuing disclosure documents would improve access to secondary market disclosure for investors and municipal securities market participants, commenters expressed the expectation that allowing only one entity to serve as the repository for continuing disclosure documents would greatly streamline the current system and resolve previous accessibility and consistency issues that resulted from submissions to several different information repositories.⁶⁵ In addition, commenters noted that having a single repository for secondary market disclosures would benefit investors by allowing them to obtain complete information without having to search for disclosures in multiple locations.⁶⁶ One commenter stated that its members reported that it is rare for municipal securities disclosure information currently to be found in one location.⁶⁷ This commenter expressed the view that a single repository would significantly improve information availability by allowing investors to obtain information more readily, increasing the likelihood that investors can obtain more complete information and enabling them to better protect themselves from misrepresentation or other fraudulent activities, and would assist investors in making more informed investment decisions.⁶⁸ Another commenter echoed this concern when, in discussing the discrepancies that currently exist, it stated that it is not reasonable to expect an investor to have to search multiple locations for the same information.⁶⁹ One commenter—a financial information disseminator—noted that it is not feasible under the current system for it to have access to municipal bond

⁵⁶ See *supra* note 35.

⁵⁷ See, e.g., GFOA Letter, at 1, Vanguard Letter, at 1, SIFMA Letter, at 1, MSRB Letter, at 1, Treasurer of the State of Connecticut Letter, at 1, IAA Letter, at 1-2, Texas MAC Letter, at 1, NAHEFFA Letter, at 1, NFMA Letter, at 1, NASACT Letter, at 1, and Multiple-Markets Letter, at 1.

⁵⁸ See Treasurer of the State of Connecticut Letter, at 1, Mooney Letter, at 1, IAA Letter, at 1, and Multiple-Markets Letter, at 1.

⁵⁹ See Treasurer of the State of Connecticut Letter, at 1, Texas MAC Letter, and Multiple-Markets Letter, at 1.

⁶⁰ See Treasurer of the State of Connecticut Letter, at 1.

⁶¹ See Treasurer of the State of Connecticut Letter, at 1, and EDGAR Online Letter.

⁶² See GFOA Letter, at 2, Vanguard Letter, at 2, SIFMA Letter, at 2, MSRB Letter, at 3, Treasurer of the State of Connecticut Letter, at 2-3, IAA Letter, at 1, NASACT Letter, at 1, and ICI Letter, at 3.

⁶³ See Treasurer of the State of Connecticut Letter, at 1, EDGAR Online Letter, SIFMA Letter, at 1, IAA Letter, at 3, and NASACT Letter at 1.

⁶⁴ See SPSE Letter and DPC DATA Letter.

⁶⁵ See Treasurer of the State of Connecticut Letter, at 1, EDGAR Online Letter, SIFMA Letter, at 1, IAA Letter, at 3, and NASACT Letter at 1.

⁶⁶ See ICI Letter, at 3, and SIFMA Letter, at 2.

⁶⁷ See ICI Letter, at 3.

⁶⁸ *Id.*

⁶⁹ See Treasurer of the State of Connecticut Letter, at 1.

disclosures for the purpose of redistribution to investors because it would have to either: (1) obtain disclosures individually from each of 50,000 different issuers; or (2) pay a NRMSIR an annual subscription fee or a \$25 per document fee, in which case it would still be unable to redistribute the disclosures because the NRMSIRs have copyrighted the documents by categorizing and reformatting the documents into a proprietary format.⁷⁰ This commenter further noted that obtaining what it referred to as a “fundamental database” of municipal disclosures is currently problematic because the disclosures are difficult to locate, financial reporting between municipalities differs greatly, and the volume of documents is too great.⁷¹ Another commenter also supported the replacement of the current system and agreed with the Commission that a centralized location for the collection of information would eliminate the problem of an issuer failing to provide certain information to every repository, resulting in one repository not having a complete set of information.⁷² In addition, a single source of secondary market information was anticipated by some commenters to reduce the costs incurred by market participants as a result of the existing fragmented system, which forces investors and others to seek information from multiple sources.⁷³ Furthermore, it was suggested that, as with the Commission’s EDGAR system for reporting issuers, the establishment of a single repository for municipal information would encourage links with other information delivery sources that the investing public could access, such as free Web sites, subscriptions, or brokerage services, which would promote greater familiarity and usage and a more transparent and efficient market.⁷⁴

We also requested comment on whether the availability of such information from a single source would simplify compliance with regulatory requirements by Participating Underwriters and others. Commenters anticipated that having a single site for continuing disclosure information would assist dealers in meeting their obligation to obtain the information necessary to establish a reasonable basis for making investment recommendations, improve the due diligence activities of underwriters of

new offerings, and assist mutual funds in carrying out their regulatory obligations.⁷⁵ Some commenters indicated a belief that a single repository would simplify the manner in which municipal issuers, obligated persons and their agents make filings, and promote full compliance by issuers and obligated persons with the filing requirements contained in continuing disclosure agreements.⁷⁶

Two commenters that are NRMSIRs opposed having a single repository.⁷⁷ Both commenters stated that the proposed amendments would not accomplish the Commission’s information goals because the amendments do not address the root cause of current municipal disclosure problems, such as issuers who file late or fail to file.⁷⁸ One commenter stated the Commission’s information goals would not be accomplished because of the absence of uniform accounting and financial reporting standards for issuers in the municipal market.⁷⁹ One commenter was of the opinion that the proposed amendment “does nothing to improve the overall continuing disclosure regime, except to make the filing materials available free of charge to the public.”⁸⁰ This commenter further stated that many problems with the present system of municipal continuing disclosure would “remain unaddressed in the proposed rule change, as do other publicly described and measured problems such as the significant level of municipal continuing disclosure delinquency” and that the “proposed rule change has no substantive benefit to offer.”⁸¹ Another commenter, while noting that numerous inefficiencies exist within the current NRMSIR system, indicated that a single repository system still would depend on if, how, and when an issuer submits information.⁸² The Commission understands that the proposed amendments will not necessarily solve every problem found in the current system based on NRMSIRs and SIDs. Under the current system, it is not possible to determine with certainty whether gaps in the continuing disclosure document collections of NRMSIRs are the result of failures by issuers to provide continuing disclosure documents as provided in their continuing disclosure agreements or

failures of NRMSIRs to maintain accurate indices or adequate document retrieval systems. The Commission believes that the use of a single repository will make it easier for investors and others to identify issuers who fail to file. The Commission expects that, with the rule amendments, investors will be able to make better informed investment decisions and Participating Underwriters and Dealers will be able to fulfill their regulatory responsibilities more easily and accurately. At the same time, the Commission believes that the use of a single venue, from which all continuing disclosure documents will be available to the general public immediately upon being filed, will provide a comprehensive source of information to NRMSIRs and other vendors to utilize in their value added products.

One commenter, who opposed the amendments, suggested the use of a “central post office” approach whereby all filings would be supplied to a single location for immediate redistribution to all NRMSIRs and SIDs and an index of filings would be available to the general public at no charge.⁸³ Another commenter, who supported a single repository, requested that, in the event the Commission determines not to adopt the proposed amendments, it consider the establishment of a “central post office” facility.⁸⁴ One commenter, which currently operates such a “central post office” facility, also supported having of a single repository operated by the MSRB and indicated its belief that a single repository would be more efficient than the current decentralized system.⁸⁵ The Commission has considered a “central post office” approach. However, while a central post office may benefit NRMSIRs by providing a comprehensive source of continuing disclosure documents in an electronic format, it would not result in such documents being made available to the public at no charge. The Commission believes that direct access to such information from a single repository, without charge, will benefit investors, particularly individual investors, while providing a comprehensive source of continuing disclosure documents to information vendors and others who may wish to obtain all filings or a subset thereof, such as filings related to issuers and obligated persons in a single state.

One commenter noted that having a single repository might cause investors and broker-dealers unduly to rely on the

⁷⁰ See EDGAR Online Letter, at 2.

⁷¹ See EDGAR Online Letter, at 4.

⁷² See IAA Letter, at 2.

⁷³ See ICI Letter, at 3, and SIFMA Letter, at 2.

⁷⁴ See Treasurer of the State of Connecticut Letter, at 1–2.

⁷⁵ See SIFMA Letter, at 2, and ICI Letter, at 3.

⁷⁶ See GFOA Letter, at 1, and SIFMA Letter, at 2.

⁷⁷ See SPSE Letter and DPC DATA Letter.

⁷⁸ See SPSE Letter, at 8, and DPC DATA Letter, at 1.

⁷⁹ See SPSE Letter, at 8.

⁸⁰ See DPC DATA Letter, at 1.

⁸¹ *Id.*

⁸² See DAC Letter, at 3.

⁸³ See SPSE Letter, at 2.

⁸⁴ See GFOA Letter, at 2.

⁸⁵ See Texas MAC Letter.

repository's contents, which it believed would create a risk of undermining the purpose of protecting investors against fraud.⁸⁶ This commenter provided no reason for its view that documents supplied to the MSRB would be less reliable than those supplied to NRMSIRs and SIDs directly or through a "central post office."

While we acknowledge that today's amendments do not address all of the information challenges of the municipal market, we nonetheless believe that they will be a significant step forward in improving the availability of, and access to, secondary market municipal disclosures. As noted above, the vast majority of commenters on the proposed amendments believed that the adoption of the rule amendments will simplify and improve the current system. The Commission also believes that this will be the case. With respect to comments favoring a "central post office," we believe that this approach would fail to achieve the benefits of the amendments. For example, with a central post office, there would continue to be no single location to which investors, particularly individuals, could turn for free access to information regarding municipal securities. Instead, individuals or entities that wish to obtain such information would find it necessary first to access the central post office to find out what documents might be available from NRMSIRs and SIDs and then to contact one or more NRMSIRs or SIDs and pay applicable fees to obtain the document or documents they seek. This would be a less efficient process than that contemplated by the final amendments, in which interested persons could directly access, view and print for free continuing disclosure documents from one place—the MSRB's Internet site.

Moreover, a "central post office" would not, to the same extent as the Commission's amendments, simplify compliance with regulatory requirements by Participating Underwriters, Dealers and others. This is because they would have to first access the "central post office" to determine what documents are available and then contact one or more NRMSIRs or SIDs to obtain these documents. In fact, one commenter that supported the proposed amendments indicated that the proposal, along with the MSRB EMMA Proposal, "takes the notion of a central post office one step further by streamlining the process and removing the necessity and inefficiency of forwarding filings to several NRMSIRs

and SIDs."⁸⁷ We therefore anticipate that public access to all continuing disclosure documents on the Internet, as provided by the amendments, will promote market efficiency and deter fraud by improving the availability of information to all investors.

2. MSRB as the Sole Repository

In the Proposing Release, we sought comment concerning whether the MSRB should be the sole repository included in Rule 15c2–12 or whether another entity, such as a private vendor, should be the sole repository, instead of the MSRB, and requested that commenters provide reasons for their viewpoints. As proposed, we are revising Rule 15c2–12 to delete all references to NRMSIRs and SIDs and in their place refer solely to the MSRB.

Twelve commenters supported and two commenters opposed our proposal for the MSRB to be the single repository for secondary market disclosure.⁸⁸ Commenters favoring the MSRB as the sole repository expressed a belief that the Commission's oversight of the MSRB as a self-regulatory organization ("SRO") and the MSRB's experience with the complexities of municipal securities and the municipal securities markets and the MSRB's direct experience in developing and maintaining electronic information systems for the municipal securities market (such as its MSIL and RTRS systems) would provide significant value to the framework of the proposed repository.⁸⁹ The two commenters that opposed having the MSRB as the sole repository believed that the current system should be retained and that they and other vendors of municipal information would be at a competitive disadvantage if the MSRB became the sole repository.⁹⁰

Comment also was solicited regarding whether the MSRB's status as an SRO would be an advantage or disadvantage to its serving as the sole repository. Three commenters stated a belief that having the MSRB serve as the sole repository is reasonable because, as an SRO, it is subject to oversight by the Commission.⁹¹ One of these

commenters also noted that, as a result, a rule change relevant to the continuing disclosure service of EMMA would be subject to public comment and Commission approval.⁹² However, a commenter that opposed the proposed amendments suggested that naming the MSRB to be the sole repository would not be appropriate because the MSRB would be reimbursed through mandatory fees assessed against broker-dealers rather than users.⁹³ This commenter expressed a belief that such costs ultimately would be passed along by broker-dealers to their customers.⁹⁴

We also sought comment on whether the MSRB would be an appropriate operator of a centralized repository for the collection and availability of continuing disclosure information about municipal securities, and whether there is a more appropriate location or means through which such information could be made readily available to the public without charge. Some commenters noted that one benefit of having the MSRB act as sole repository would be the accessibility of comprehensive information regarding municipal securities, including official statements, continuing disclosure documents and pricing information, without charge at one location.⁹⁵ However, one commenter suggested that, by analogy to our EDGAR system, the Commission might be a more appropriate party to operate such a repository than the MSRB, which represents only one segment of the market (*i.e.*, brokers, dealers and municipal securities dealers).⁹⁶ In addition, one of the existing NRMSIRs indicated its view that it is inappropriate for a quasi-governmental entity such as the MSRB to operate a facility that would compete with private business.⁹⁷ Two commenters indicated an overall preference for maintenance of the existing structure of the Rule—pursuant to which private entities, not the MSRB, provide locations or means through which such information is made available to the public.⁹⁸

We agree with the many commenters who believed that the MSRB is the appropriate entity to serve as the single repository. Established pursuant to an act of Congress⁹⁹ as an SRO for brokers,

⁸⁷ See NASACT Letter, at 1.

⁸⁸ See GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, Texas MAC Letter, NASACT Letter, OMAC Letter, ICI Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, and EDGAR Online Letter (each supporting the MSRB as the single repository). See also SPSE Letter and DPC DATA Letter (each opposing the MSRB as the single repository).

⁸⁹ See SIFMA Letter, NFMA Letter, and ICI Letter.

⁹⁰ See SPSE Letter, at 2, 7 and DPC DATA Letter, at 2.

⁹¹ See Vanguard Letter, SIFMA Letter, and ICI Letter.

⁹² See SIFMA Letter, at 3.

⁹³ See SPSE Letter, at 11.

⁹⁴ *Id.*

⁹⁵ See, e.g., SIFMA Letter, at 2, and NASACT Letter, at 1.

⁹⁶ See Treasurer of the State of Connecticut Letter, at 2.

⁹⁷ See DPC DATA Letter, at 2. See discussion below in Section III.A.3.

⁹⁸ See SPSE Letter and DPC DATA Letter.

⁹⁹ 15 U.S.C. 78o–4.

⁸⁶ See SPSE Letter, at 2.

dealers and municipal securities dealers engaged in transactions in municipal securities, the MSRB is subject to Commission oversight, as provided by the Exchange Act. As an SRO, the MSRB is required to file its rules and changes to those rules with the Commission for notice and comment under section 19(b) of the Exchange Act.¹⁰⁰ Pursuant to section 15B(b)(2)(C) of the Exchange Act, the MSRB's rules are required to be designed, in part, "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."¹⁰¹ The MSRB's existing RTRS and MSIL systems, and the primary offering information component of the EMMA system that has been approved by the Commission (relating to the submission of official statements and advance refunding documents),¹⁰² were subject to notice and comment and Commission review. Similarly, the MSRB's proposal to establish a continuing disclosure component within the EMMA system was subject to notice and comment under section 19(b) of the Exchange Act, as would as any future changes to the system.¹⁰³ Further, we believe that, in addition to being subject to Commission oversight as an SRO, the MSRB is both familiar with the complexities of municipal securities and the municipal securities market and has experience in developing and maintaining electronic information systems for that market.¹⁰⁴ Collectively, these factors lead us to adopt amendments to Rule 15c2-12 to provide that the MSRB be the centralized location for collecting (in an electronic format) and making information about municipal securities available to the public at no cost.

Although two commenters opposed the proposal for the MSRB to be the sole repository,¹⁰⁵ the Commission believes that the MSRB's status as an SRO and experience with municipal market disclosure make it appropriate for the MSRB to be the sole repository.

Moreover, as discussed in detail throughout the Proposing Release as well as this release, the Commission believes that the current NRMSIR model of disclosure needs to be improved. Many commenters agreed with this view.¹⁰⁶ Although one commenter suggested that the Commission should be the repository,¹⁰⁷ we believe that the MSRB, in light of its experience with municipal disclosure and its status as an SRO, will be in a better position to act as the repository more quickly and efficiently.

As discussed below, with respect to the comment that it is inappropriate for a quasi-governmental entity such as the MSRB to operate a facility that would compete with private business, the Commission believes that any competitive impact that may result from the MSRB's status as the sole repository is justified by the benefits that such status is expected to provide to investors, broker-dealers, mutual funds, vendors of municipal information, municipal security analysts, other market professionals, and the public generally.¹⁰⁸ Further, as discussed in section III.A.3. below, we believe that having the MSRB serve as the repository for the electronic submission and availability of continuing disclosure documents could foster competition for value-added products and services and thus it is not anti-competitive for the MSRB to serve as the repository.

With respect to the statement that broker-dealers would pass on fees to their customers to support the EMMA system, the Commission notes that the MSRB, as an SRO, would have to file any fees relating to the use of EMMA with the Commission under section 19(b) of the Exchange Act.¹⁰⁹ The Commission further notes that broker-dealers currently are charged fees for access to disclosure documents obtained from the NRMSIRs that they currently may or may not pass on to their customers. According to the MSRB, it presently anticipates no increase in fees on brokers, dealers, and municipal securities dealers who effect transactions in municipal securities to establish and operate the EMMA

system.¹¹⁰ The MSRB has indicated that it has funds on hand that, together with amounts it will collect in the future under its current fee schedule, it believes will be sufficient to establish and operate the EMMA system.¹¹¹

Indeed, we anticipate that the accessibility of documents through the repository will greatly benefit dealers in satisfying their obligation to have a reasonable basis for investment recommendations and other regulatory responsibilities, in addition to investors and other market participants who seek information about municipal securities. All commenters who addressed this issue supported this conclusion.¹¹²

3. Competitive Concerns With a Single Repository

In the Proposing Release, we discussed the competitive implications generally of having a single repository for continuing disclosure documents and specifically of having the MSRB serve as the sole repository and sought commenters' views on potential competition issues. With respect to the Exchange Act goal of promoting competition, we note that, when we adopted Rule 15c2-12 in 1989, we strongly supported the development of one or more central repositories for municipal disclosure documents.¹¹³ We "recognize[d] the benefits that may accrue from the creation of competing private repositories," and indicated that "the creation of central sources for municipal offering documents is an important first step that may eventually encourage widespread use of repositories to disseminate annual reports and other current information about issuers to the secondary markets."¹¹⁴ Further, when we adopted the 1994 Amendments, we stated that the "requirement to deliver disclosure to the NRMSIRs and the appropriate SID also allay[ed] the anti-competitive concerns raised by the creation of a single repository."¹¹⁵

Since the adoption of the 1994 Amendments, there have been significant advancements in technology

¹¹⁰ Telephone conversation between Earnesto Lanza, General Counsel, MSRB, and Martha Mahan Haines, Chief of the Office of Municipal Securities and Assistant Director, Division of Trading and Markets, October 22, 2008.

¹¹¹ *Id.*

¹¹² See SIFMA Letter, at 2, ICI Letter, at 3, Dickman Letter, Grant Letter, and Mooney Letter.

¹¹³ See 1989 Adopting Release at 54 FR 28807, *supra* note 18. See also Securities Exchange Act Release No. 33742 (March 9, 1994), 59 FR 12759 (March 17, 1994) (File No. S7-5-94) (proposing release for the 1994 Amendments) ("1994 Proposing Release").

¹¹⁴ See 1989 Adopting Release, *supra* note 18. See also 1994 Proposing Release, *supra* note 113.

¹¹⁵ See 1994 Amendments, *supra* note 21.

¹⁰⁰ 15 U.S.C. 78s(b).

¹⁰¹ 15 U.S.C. 78o-4(b)(2)(C).

¹⁰² See Securities Exchange Act Release No. 57577, *supra* note 46.

¹⁰³ See MSRB EMMA Proposal, *supra* note 12.

¹⁰⁴ For example, the MSRB is experienced with operating CDINet, the MSIL system, and the RTRS system.

¹⁰⁵ See SPSE Letter, at 2, DPC DATA Letter, at 3.

¹⁰⁶ See, e.g., Vanguard Letter, at 2, NASACT Letter, at 1, ICI Letter, at 3, IAA Letter, at 1, and NFMA Letter, at 1.

¹⁰⁷ See Treasurer of the State of Connecticut Letter, at 2.

¹⁰⁸ See discussion above regarding the MSRB's status as an SRO and resulting Commission oversight, *infra* Section III.A.3.

¹⁰⁹ 15 U.S.C. 78s(b). Under Section 15B(b)(2)(f) of the Exchange Act, 15 U.S.C. 78o-4(b)(2)(f), among other requirements, any fees charged by the MSRB must be reasonable.

and information systems that allow market participants and investors, both retail and institutional, easily, quickly, and inexpensively to obtain information through electronic means. The exponential growth of the Internet and the capacity it affords to investors, particularly individual investors, to obtain, compile and review information has likely helped to keep investors better informed. In addition to the Commission's EDGAR system, which contains filings by public companies required to file periodic reports and by mutual funds, we have increasingly encouraged and, in some cases required, the use of the Internet and Web sites by public reporting companies and mutual funds to provide disclosures and communicate with investors.¹¹⁶

Our adoption of the proposed amendments, which provide for having a single repository for the electronic collection and availability of continuing disclosure documents, will help further the Exchange Act objective of promoting competition because information about municipal securities will be more widely available to market professionals, investors, information vendors, and others as a result of the final amendments. For example, we believe that competition among vendors can increase because vendors can utilize this information to provide value-added services to municipal market participants. The rule amendments also may promote competition in the purchase and sale of municipal securities because the greater availability of information, delivered electronically through a single repository, may instill greater investor confidence in the municipal securities market. Moreover, this greater availability of information also may encourage improvement in the completeness and timeliness of disclosures by issuers and obligated persons and may foster interest in municipal securities by retail and institutional customers. As a result, more investors may be attracted to this market sector and broker-dealers may compete for their business.

¹¹⁶ See, e.g., Securities Exchange Act Release Nos. 52056 (July 19, 2005), 70 FR 44722 (August 3, 2005) (File No. S7-38-04) (adopting amendments to encourage and, in some cases, mandate the use of an Internet site in securities offering); 56135 (July 26, 2007), 72 FR 42222 (August 1, 2007) (File No. S7-03-07) (adopting amendments to the proxy rules under the Exchange Act requiring issuers and other soliciting persons to post their proxy materials on an Internet Web site and providing shareholders with a notice of the Internet availability of the materials); and 58288 (August 1, 2008), 73 FR 45862 (August 7, 2008) (File No. S7-23-08) (interpretative release providing guidance on the use of company Web sites).

In the Proposing Release, we acknowledged that adoption of the proposed amendments potentially could have an adverse impact on one or more existing NRMSIRs, especially if their business models depended on their status as a NRMSIR. Moreover, since NRMSIRs have received compensation for providing copies of continuing disclosure documents to persons who request them, we noted that one or more NRMSIRs possibly could be adversely affected by the rule amendments, if they no longer have available to them a steady flow of funds from providing for a fee copies of continuing disclosure documents to persons who request them. As a result of the final amendments, a NRMSIR could find that it would have to revise its current manner of doing business or face a significant downturn in its business operations. Vendors of information about municipal securities, other than NRMSIRs, also could be affected by the final amendments because the MSRB proposes to provide information electronically free of charge.

In addition, because there would be just one repository, in lieu of the four NRMSIRs, the Proposing Release noted that the proposed amendments could reduce competition with respect to services provided by NRMSIRs as information vendors. In addition to supplying municipal disclosure documents upon request, NRMSIRs also provide value-added market data services to municipal investors that incorporate continuing disclosure information. We noted in the Proposing Release that, if NRMSIRs are adversely affected by the proposed amendments, it is possible that there could be a reduction in these value-added market data services relating to municipal securities or a loss of innovation in offering competing information services regarding municipal securities.

We received comment letters from two NRMSIRs that raised concerns about the competitive effects of the proposed amendments.¹¹⁷ The primary concerns, raised by both commenters, relate to the MSRB's role as the sole repository of continuing disclosure documents and the competitive effects that this would have on existing vendors of municipal disclosure information. One commenter stated that the Commission's proposal "would allow the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format."¹¹⁸ In addition, this commenter noted that the

¹¹⁷ See DPC DATA Letter and SPSE Letter.

¹¹⁸ See DPC DATA Letter, at 1.

Commission's proposal would place the MSRB "in direct competition with commercial vendors who have served the market as practical implementers of Rule 15c2-12 without any subsidy for more than a decade."¹¹⁹ This commenter also expressed concern that the MSRB would unfairly discriminate against private vendors by controlling their access to information through fee structures and dissemination of information.¹²⁰ The Commission acknowledges that the existing NRMSIR system was an improvement over the disclosure regime that was in place prior to its creation. However, we believe that there have been significant improvements in technology that will allow for increased access to municipal disclosure information to investors and others for free via the Internet. This supports having the MSRB serve as the sole repository. We continue to believe that our rule amendments being adopted today are a significant step forward in fostering greater availability of municipal disclosures to a broad range of market participants, investors, and other individuals and entities, thereby preventing fraud. Moreover, we note that a majority of commenters recognized there were inefficiencies with respect to the current municipal disclosure system and supported the proposed amendments.¹²¹

Another commenter echoed similar sentiments as the commenter above and cited to the Commission's statements in adopting Rule 15c2-12 in 1989 and amendments to the Rule in 1994, which discussed possible anti-competitive concerns regarding the use of a single repository.¹²² This commenter noted that eliminating the NRMSIR function would upset the balance of its current business model and have an impact on its ability to provide value-added products and services.¹²³ The commenter disputed that the potential burdens on competition would be justified by the proposed amendments' adoption because, in its view, the current issues with municipal disclosure lie in the quality and timeliness of the information that is filed.¹²⁴ This commenter also urged the Commission to adopt an alternative approach.¹²⁵ Under this commenter's proposal, the MSRB would not be the sole repository for municipal disclosure

¹¹⁹ See DPC DATA Letter, at 2.

¹²⁰ *Id.*

¹²¹ See *supra* notes 57-64 and accompanying text.

¹²² See SPSE Letter, at 5-7.

¹²³ See SPSE Letter, at 7.

¹²⁴ See SPSE Letter, at 7-8.

¹²⁵ See SPSE Letter, at 3-5.

information.¹²⁶ Instead, this commenter proposed having an unspecified entity serve as a central electronic post office for municipal disclosure information where “issuers and obligors would file documents through a single electronic format” and such entity “would then forward the centrally-filed documents in real time to the NRMSIRs.”¹²⁷ The commenter expressed no opinion regarding the identity of the entity that should serve as the central electronic post office or how such entity would be chosen.¹²⁸

Although two commenters questioned whether the proposed amendments would benefit competition,¹²⁹ the Commission continues to believe that having a single repository will provide the benefits discussed throughout the release and will not have a significant adverse effect on the ability or willingness of private information vendors to compete to create and market value-added data products. Commercial vendors will be able to readily access the information made available by the MSRB to re-disseminate it or use it in whatever value-added products they may wish to provide.¹³⁰ In fact, we believe a single repository in which documents are submitted in an electronic format could encourage the private information vendors to disseminate municipal securities information by reducing the cost of entry into the information services market. We also believe that existing vendors may need to make some adjustments to their infrastructure, facilities, or services offered. However, we believe that some vendors could determine that they no longer will need to invest in the infrastructure and facilities necessary to collect and store continuing disclosure documents, and new entrants into the market will not need to obtain the information from multiple locations, but rather could readily access such information from one centralized source. Thus, we believe that all vendors should be able to obtain easily continuing disclosure documents

and should be able to compete in providing value-added services.

We previously stated that we would specifically consider the competitive implications of the MSRB becoming a repository.¹³¹ In addition, we stated that if we were to conclude that the MSRB's status as a repository might have adverse competitive implications, we would consider whether we should take any action to address these effects.¹³² As noted earlier, we recognize that competition with respect to certain information services regarding municipal securities that are provided by the existing NRMSIRs could decline should the MSRB become the central repository. Two commenters suggested in their comment letters that a decrease in competition could occur as a result of the Commission's rulemaking.¹³³ As discussed in more detail above and in the Proposing Release, circumstances have changed since we last considered Rule 15c2-12 amendments in 1994. For example, technology developments have facilitated access to information and access to municipal information typically is subject to a fee and can be difficult for individuals to obtain. Further, the NRMSIRs did not develop a system of linkages with each other. We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors could utilize the MSRB in its capacity as a repository as a means to collect information from the continuing disclosure documents to create value-added products for their customers.¹³⁴

With respect to concerns that the MSRB could control private vendors' access to information through unfair fee structures and biased dissemination of information, we note that, as an SRO, the MSRB will need to file its fee changes and rule proposals relating to its EMMA system with the Commission under section 19(b) of the Exchange Act. When the Commission publishes any such proposed rule changes, interested

parties will have the opportunity to comment and bring to our attention any potential issues that they discern.

We do not believe that there are competitive implications that would uniquely apply to the MSRB in its capacity as the sole repository. As we have noted, we believe the MSRB's status as an SRO will provide an additional level of Commission oversight since changes to its rules relating to continuing disclosure documents will have to be filed for Commission consideration as a proposed rule change under section 19(b) of the Exchange Act. Accordingly, we believe that any competitive impact that may result from the MSRB's status as the sole repository is justified by the benefits that such status is expected to provide to investors, broker-dealers, mutual funds, vendors of municipal information, municipal security analysts, other market professionals, and the public generally.

4. Electronic Document Submission

Because the current environment differs markedly from the time when Rule 15c2-12 was adopted in 1989 and subsequently amended in 1994, we believe that it is appropriate to adopt an approach that utilizes the significant technological advances, such as the development and use of various electronic formats, which have occurred in the intervening years. Thus, we are adopting the proposed amendments that specify that continuing disclosure documents must be provided to the MSRB in an electronic format as specified by the MSRB.¹³⁵

We believe that this method of submission will better enable the information to be promptly posted by the single repository and made available to the public without charge. Electronic submission also will eliminate the need for manual handling of paper documents, which can be a less efficient and more costly process. For instance, the submission of paper documents would require the repository to manually review, sort and store such documents. There is also a potential for a less complete record of continuing disclosure documents at the repository if such documents are submitted in paper to the repository and, for instance, are misplaced or misfiled. The

¹²⁶ See SPSE Letter, at 4.

¹²⁷ See SPSE Letter, at 2. See discussion above in Section III.A.1.

¹²⁸ *Id.*

¹²⁹ See DPC DATA Letter, at 2, and SPSE Letter, at 6-8.

¹³⁰ In addition to making available such information on the MSRB's Web site through EMMA, the MSRB has indicated that it will make continuing disclosure documents available by subscription for a fee to information vendors and other bulk data users on terms that will promote the development of value-added services by subscribers for use by market participants. See MSRB EMMA Proposal, 73 FR at 46163. The fees for this subscription service will be subject to a proposed rule change to be filed with the Commission under Section 19(b) of the Exchange Act.

¹³¹ See Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990) (File No. SR-MSRB-89-9).

¹³² *Id.*

¹³³ See DPC DATA Letter and SPSE Letter.

¹³⁴ The Commission notes that two commenters raised concerns with the potential subscription fees associated with having the MSRB as the single repository. The Commission notes that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any subscription fees for a data stream that it proposes as well as any changes to those fees.

¹³⁵ We note that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding the electronic format that it wishes to prescribe as well as any changes to that format. In fact, the MSRB prescribed the format for submissions of continuing disclosure documents in a recent filing with the Commission. See MSRB EMMA Proposal, *supra* note 12.

Commission believes that submissions in an electronic format will not be burdensome on issuers or other obligated persons, since many continuing disclosure documents already are being created in an electronic format and, as a result, are readily transmitted by electronic means.

We requested comment on the proposed amendments to provide continuing disclosure documents in an electronic format, including whether submitting continuing disclosure documents in an electronic format would increase the efficiency of submission and availability of continuing disclosure documents, and whether submitting the documents in an electronic format would facilitate wider availability of the information. Furthermore, we requested comment concerning whether the proposed amendments should allow for the submission of paper documents and, if so, whether any conditions should be imposed in connection with paper submissions. Comments also were requested on whether the proposed amendments should allow for the availability of paper copies upon request from the central repository.

The commenters who addressed this topic supported the proposal that, under continuing disclosure agreements, continuing disclosure documents must be provided in an electronic format.¹³⁶ These commenters generally expressed the opinion that the current disclosure system, which relies on paper-based filings, should be updated in light of today's use of, and advances in, technology and that the electronic submission of documents would better enable the information to be promptly submitted, categorized, and posted on the Internet for investor use. In addition, one commenter noted that "the proposed amendments provide for necessary flexibility in changes to technology by delegating to the MSRB the authority to determine electronic formatting and identifying information."¹³⁷ Further, one commenter mentioned that, while some issuers, especially smaller issuers, may have to purchase new software in order to submit electronic documents, the overall long-term savings that an electronic-based central repository would provide would benefit state and local governments and authorities.¹³⁸ However, as discussed in section III.A.6. below, two commenters expressed the

opinion that smaller issuers may need additional time to adapt to the need to obtain documents in an electronic format.¹³⁹ No commenters suggested that the MSRB should accept paper documents.

Two commenters¹⁴⁰ urged the implementation of an interactive data format (*i.e.*, XBRL) for EMMA. In the Proposing Release, we noted that the availability of audited financial statements and other financial and statistical data in an electronic format by issuers and obligated persons could encourage the establishment of the necessary taxonomies and permit states and local governments and other obligated persons to make use of XBRL in the future, should they wish to do so.¹⁴¹ The final amendments to the Rule do not designate the electronic format or formats that EMMA will accept; instead, they provide that the MSRB will prescribe the format, which will be subject to the section 19(b) rule filing process. Nevertheless, we note that this provision allows flexibility for future implementation of improved methods for the electronic presentation of information.

One commenter stated that the design of the electronic filing format should be entrusted to a joint industry committee.¹⁴² This commenter further noted its belief that the notice and comment process would not be an adequate substitute for a joint industry working group because it would not permit ongoing dialogue.¹⁴³ While we do not believe that a joint industry committee is the only method by which the electronic filing format could be determined, we do believe that the notice and comment process is necessary to allow issuers, obligated persons and others a method for providing input in the determination of the electronic filing format. The Commission notes that our rule amendments do not preclude the formation of a joint industry committee that would be able to work with the MSRB in designing the electronic filing format. In addition, we expect that the MSRB would welcome an ongoing dialogue with those industry participants that wish to provide input on the electronic filing format and any other aspects of the continuing disclosure component of the EMMA system.

5. Identifying Information

To enable the continuing disclosure documents to be identified and retrieved accurately, we are adopting new subparagraph (b)(5)(iv) of Rule 15c2–12, as proposed to be amended, to require Participating Underwriters to reasonably determine that the issuer or obligated person has undertaken in writing to accompany continuing disclosure documents submitted to the MSRB with identifying information as prescribed by the MSRB. Similarly, the Commission is adopting a conforming change to subparagraph (d)(2)(ii)(C) of the Rule, relating to the limited undertaking set forth in Rule 15c2–12(d)(2)(ii), to specify that continuing disclosure agreements provide that the relevant continuing disclosure documents shall be provided to the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.¹⁴⁴

We believe that providing identifying information with each submitted document will permit the repository to sort and categorize the document efficiently and accurately. We also anticipate that the inclusion with each submission of the basic information needed to accurately identify the document will facilitate the ability of investors, market participants, and others to reliably search for and locate relevant disclosure documents. Facilitation of the efficient retrieval of information is designed to decrease the possibilities for fraudulent practices. Furthermore, we expect that there will be a minimal burden on Participating Underwriters to comply with this requirement because the only change is that they would need to determine reasonably that issuers and obligated persons have contractually agreed to supply the identifying information prescribed by the MSRB. On the other hand, there will be a significant benefit to investors and other municipal market participants as a result of this amendment because they will be able to more easily retrieve from the MSRB the information that they seek. Indeed, issuers and other obligated persons that choose to submit continuing disclosure documents through some existing dissemination agents and document delivery services already are supplying

¹³⁶ See Vanguard Letter, IAA Letter, e-certus Letter, NASACT Letter, ICI Letter, Multiple-Markets Letter, NFMA Letter, EDGAR Online Letter, SPSE Letter and DAC Letter.

¹³⁷ See SIFMA Letter, at 3.

¹³⁸ See GFOA Letter, at 2.

¹³⁹ See NASACT Letter, at 2, and GFOA Letter, at 2.

¹⁴⁰ See e-certus Letter, at 2, and EDGAR Online Letter, at 6.

¹⁴¹ See Proposing Release, 73 FR at 46144 n.64.

¹⁴² See SPSE Letter, at 9.

¹⁴³ *Id.*

¹⁴⁴ The MSRB proposed certain identifying information to be required in the MSRB EMMA Proposal, which the Commission is also approving. See *supra* note 12. We note that the MSRB would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any additional identifying information and any changes to that information that it wishes to prescribe.

identifying information with their submissions.¹⁴⁵

The Proposing Release also requested comments regarding supplying identifying information as prescribed by the MSRB and regarding alternative methods that would assist investors and municipal market participants in locating specific information about a municipal security that is submitted under the Rule.

Commenters generally supported requiring Participating Underwriters to reasonably determine that the issuer or obligated person has undertaken in writing to accompany all documents submitted to the MSRB with identifying information as prescribed by the MSRB.¹⁴⁶ In addition, one commenter did not believe that this determination would impose an unreasonable burden on underwriters.¹⁴⁷ The need for such information was generally perceived as essential to permit investors and others to access continuing disclosure documents from the MSRB.¹⁴⁸ Two commenters observed that in order for the EMMA system to sort and categorize disclosure documents efficiently and accurately, submissions to EMMA should include specific identifying information.¹⁴⁹ Two other commenters noted that the need for identifying information is essential.¹⁵⁰ The Commission believes that it is in the interest of issuers and obligated persons to provide accurate indexing information. Moreover, under rule changes in this release and the MSRB Approval Order, identifying information will be required by Commission and MSRB rules. Several commenters suggested specific items of identifying information that should be prescribed by the MSRB or sought clarification

about such items.¹⁵¹ Because these comments are pertinent to the MSRB's EMMA proposal, and not to the Commission's adoption of these amendments, they are addressed in the Commission order approving the continuing disclosure document component of the EMMA system.¹⁵²

6. Exemptive Provision

We are amending Rule 15c2–12(d)(2)(ii), as proposed, which provides for a limited exemption from the requirements of paragraph (b)(5) of the Rule, as long as the conditions specified in paragraph (d)(2) are met. The exemption in Rule 15c2–12(d)(2) provides that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure documents pursuant to continuing disclosure agreements, does not apply to a primary offering if three conditions are met. These conditions are: (i) The issuer or the obligated person has less than or equal to \$10 million of debt outstanding;¹⁵³ (ii) the issuer or obligated person has undertaken in a written agreement or contract (“limited undertaking”) to provide: (A) upon request to any person or at least annually to the appropriate SID, if any, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available,¹⁵⁴ and (B) to each NRMSIR or to the MSRB, and to the appropriate SID, if any, material event notices;¹⁵⁵ and (iii) the final official statement identifies by name, address and telephone numbers the persons from which the foregoing information, data and notices can be obtained.¹⁵⁶ The rule amendments revise the limited undertaking set forth in 15c2–12(d)(2)(ii)(A) and (B) by deleting references to NRMSIRs and SIDs, and by solely referencing the MSRB.¹⁵⁷ Accordingly, under the amendment to Rule 15c2–12(d)(2)(ii), a

Participating Underwriter will be exempt from its obligations under paragraph (b)(5) of the Rule if an issuer or obligated person has agreed in its limited undertaking to provide annual financial information, operating data and material event notices to the MSRB in an electronic format as prescribed by the MSRB, and the exemption's other conditions are met.

One commenter stated that the practical effect of the proposed amendments would be the repeal of the small issuer exemption.¹⁵⁸ The commenter stated that, while small issuers receive few requests for continuing disclosure documents from investors, many of these issuers are subject to public disclosure laws and make financial information and operating data publicly available that exceeds that which would be included in an official statement or required of other issuers pursuant to a continuing disclosure agreement under Rule 15c2–12(b)(5). The commenter believed that the practical effect of this proposal would be to cause small issuers to incur increased costs associated with filing such information electronically because they believed that the information may be considerably more extensive than that submitted by other issuers. The commenter suggested that the Commission either retain the small issuer exemption in its current form or delete paragraph (d)(2) of Rule 15c2–12 altogether.

We recognize that one effect of the amendments will be that some small issuers will submit annual financial information and operating data to the MSRB when currently they do not regularly submit such disclosures to any repository. We do not believe that electronically formatting information a small issuer already has and makes publicly available will be a significant burden. Further, we do not believe that the final amendments would result in small issuers providing the voluminous filings the commenter suggests. This amendment does not affect the nature of a Participating Underwriter's obligation to reasonably determine that a small issuer has undertaken to deliver continuing disclosure documents to fulfill the conditions of the exemption; rather, it affects what the Participating Underwriter needs to determine regarding the undertaking with respect to the location where such documents are to be sent. Specifically, the final amendments do not revise the provision limiting the commitment to provide annual financial or operating data only if such information is customarily

¹⁴⁵ The commitment by an issuer to provide identifying information exists only if it were included in a continuing disclosure agreement. As a result, issuers submitting continuing disclosure documents pursuant to the terms of undertakings that were entered into prior to the effective date of the final amendments and that did not require identifying information will be able to submit documents without supplying identifying information. Nevertheless, we encourage such issuers to include identifying information when they or their agent submit continuing disclosure documents to the repository. See also Section III.C., *infra* discussing transition issues.

¹⁴⁶ See, e.g., GFAO Letter, at 2, Vanguard Letter, at 4, SIFMA Letter, at 2, Texas MAC Letter, OMAC Letter, ICI Letter, at 5, Multiple-Markets Letter, at 2–3, NFMA Letter, at 1, and Edgar Online Letter, at 3.

¹⁴⁷ See SIFMA Letter, at 2.

¹⁴⁸ See, e.g., Vanguard Letter, at 4, Texas MAC Letter, NFMA Letter, at 2, and ICI Letter, at 5.

¹⁴⁹ See Vanguard Letter, at 4, and NFMA Letter, at 1.

¹⁵⁰ See Texas MAC Letter and OMAC Letter.

¹⁵¹ See, e.g., Edgar Online Letter, at 3, DAC Letter, at 6, Multiple-Markets Letter, at 3, NFMA Letter, at 2, and NAHEFFA Letter, at 2.

¹⁵² See MSRB Approval Order, *supra* note 12.

¹⁵³ 17 CFR 240.15c2–12(d)(2)(i).

¹⁵⁴ 17 CFR 240.15c2–12(d)(2)(ii)(A).

¹⁵⁵ 17 CFR 240.15c2–12(d)(2)(ii)(B).

¹⁵⁶ Although this provision provides an exemption for Participating Underwriters in a primary offering of municipal securities, as long as its conditions are satisfied, it is commonly referred to as the “small issuer exemption.”

¹⁵⁷ See Section III.A.7. *infra* for a discussion of the deletion from the Rule of references to SIDs.

¹⁵⁸ See NABL Letter, at 2.

prepared by such obligated person and is publicly available. Furthermore, if a small issuer customarily prepares and makes publicly available information that is more extensive than that provided in the final official statement, the Participating Underwriter may rely on an undertaking that is limited to providing the information that would comprise annual financial information for non-exempt offerings.¹⁵⁹

Under our amendments, a condition of the exemption available to Participating Underwriters now will require the undertaking to provide that annual financial information or operating data, if customarily prepared and publicly available, will be submitted to the MSRB, rather than being supplied only upon request to any person or at least annually to the appropriate SID, if any.¹⁶⁰ Participating Underwriters seeking an exemption from subparagraph (b)(5) would no longer need to reasonably determine that small issuers will provide annual financial information or operating data to any person, upon request, pursuant to the small issuer's undertaking. If such requests are received, small issuers will be able to refer investors or others to the MSRB to obtain the information. Nevertheless, we recognize that today some small issuers that reside in a state without a SID and that historically receive no requests from investors or others for such annual financial information are not obligated by their continuing disclosure agreement to provide this information to each NRMSIR, the MSRB, or any other entity.¹⁶¹ In contrast, as a condition of the exemption, the final amendments will provide that a Participating Underwriter must reasonably determine that a small issuer undertakes to provide annual financial information, to the extent the issuer prepares it and makes it publicly available, to the MSRB in an electronic format.

At this time, we believe that our proposed amendment of the small issuer exemption is preferable to the commenter's alternative suggestion to eliminate the small issuer exemption

altogether.¹⁶² We note that the final amendments do not alter the provision that specifies that the undertaking by small issuers to provide annual financial information or operating data need be satisfied only to the extent that such information is customarily prepared by the obligated person and is publicly available.¹⁶³ We understand that most small governmental issuers prepare and make publicly available annual financial statements or other financial and operating data as a matter of course. For such issuers, we recognize that the difference between our amendment to the exemption and elimination of the exemption entirely, as a practical matter, may be minimal. However, we note that small obligated persons, such as private conduit borrowers, also benefit from the small issuer exemption. Such obligated persons and some small issuers may not customarily prepare financial and operating data for public availability. We believe that it is preferable to take a measured approach and observe the actual impact of the final amendments before considering elimination of the small issuer exemption entirely. Accordingly, the Commission has determined not to eliminate at this time the small issuer exemption as the commenter suggested.¹⁶⁴

We believe that the exemptive provision of the amended Rule—that paragraph (b)(5) of the Rule will not apply under the revised conditions described above—is justified despite the increased burden on some small issuers by the amended Rule's objective that this information be more widely available to investors, market professionals, and others. The availability of this information should help brokers to fulfill their obligations and investors to make better informed investment decisions regarding municipal securities, thereby helping to deter fraud in the municipal securities market.

¹⁶² See NABL Letter, at 2.

¹⁶³ 17 CFR 15c2–12(d)(2)(ii)(A).

¹⁶⁴ It is possible that this provision could provide a disincentive to an obligated person to prepare the information and make it publicly available. As noted above, we understand that most small governmental issuers routinely prepare and make publicly available annual financial statements or other financial and operating data, although some small obligated persons, such as private conduit borrowers, may not prepare this information and make it publicly available. We will monitor the extent to which the exemption as currently crafted fosters a disincentive to preparing annual financial information and operating data and making it publicly available and will consider whether any further amendment to the small issuer exemption is warranted.

7. SIDs

We are amending subparagraphs (A) through (D) of Rule 15c2–12(b)(5)(i), as proposed to be amended, to delete references to SIDs, in addition to references to each NRMSIR. Thus, Participating Underwriters no longer will need to reasonably determine that issuers or obligated persons have agreed in continuing disclosure agreements to provide continuing disclosure documents to the appropriate SID, if any. We also are revising paragraph (d)(2) of the Rule, which provides for an exemption from paragraph (b)(5) of the Rule if specified conditions are met.¹⁶⁵ The final amendments revise the limited undertaking set forth in Rule 15c2–12(d)(2)(ii) by deleting references to each NRMSIR and the appropriate SID, if any, and solely referencing the MSRB and specifying that the financial information, operating data, and material event notices are to be provided to the MSRB in an electronic format and accompanied by identifying information as prescribed by the MSRB. As noted above, under paragraph (d)(2) of the Rule, Participating Underwriters will be exempt from their obligation under paragraph (b)(5) of the Rule if the issuer or obligated person has agreed in its limited undertaking to provide financial information, operating data, and material event notices to the MSRB in an electronic format and accompanied by identifying information as prescribed by the MSRB, and if the provision's other conditions are met.

We requested comment on the proposal to omit references to the SIDs in the Rule. In particular, comment was requested concerning the impact of removing the references to the SIDs in the Rule, including the impact of this proposal on the obligations of Participating Underwriters, issuers and obligated persons. We also requested comment on the effect of the proposed amendment on SIDs and on their role in the collection and disclosure of continuing disclosure documents.

Five commenters addressed the proposed removal of references to SIDs from the Rule.¹⁶⁶ Four of the commenters stated that the MSRB should provide a data feed to SIDs of documents related to issuers in their states so that those issuers that may be required by their states to send continuing disclosure documents to a SID need not provide them to both the

¹⁶⁵ See Section III.A.6. *supra* for a discussion of the exemptive provision contained in Rule 15c2–12(d)(2).

¹⁶⁶ See GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

¹⁵⁹ See response to question 18 in letter to John S. Overdorff, Chair, and Gerald J. Laporte, Vice-Chair, of the Securities Law and Disclosure Committee of NABL, from Robert L.D. Colby, Deputy Director, Division of Market Regulation, dated June 23, 1995, 1995 SEC No-Act. LEXIS 563.

¹⁶⁰ See Section V.B., *infra* for a discussion of the costs small issuers may incur in connection with submitting continuing disclosure documents to the MSRB.

¹⁶¹ We understand that, in some cases, state laws may provide for the public availability or distribution of such information. However, these requirements vary widely.

MSRB and a SID.¹⁶⁷ They believed that this approach would be more efficient for both issuers and SIDs and result in more complete and consistent data availability of information from the MSRB and SIDs. Furthermore, two of these commenters expressly indicated that there should be no charge to SIDs to receive such a data feed.¹⁶⁸ One commenter supported the proposal to remove references to SIDs from the Rule, noting that there are just three SIDs and that the ease of public access to the MSRB's EMMA system renders specific reference to SIDs, unnecessary.¹⁶⁹

Because we are amending the Rule to provide for a single repository for the electronic collection and availability of continuing disclosure documents that, in our view, will efficiently and effectively improve disclosure in the municipal securities market, we believe that it is no longer necessary to specifically require in the Rule that Participating Underwriters reasonably determine that issuers and obligated persons have contractually agreed to provide continuing disclosure documents to the SIDs or that the provision that provides an exemption from this requirement refer to SIDs. Nevertheless, the amendments will not affect the legal obligation of issuers and obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, as required under the appropriate state law. In addition, the amendments will have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to the effective date of the amendments to the Rule to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that may be required under the appropriate state law. We agree with the opinions of those commenters who underscored the importance for the document collections of the MSRB and SIDs to be consistent to avoid uneven access to information that otherwise might result. However, the commenters' suggestions relating to data feeds, including free access to such feeds, relate to the operation of the MSRB's continuing disclosure component of the EMMA system, rather than to the instant rulemaking and therefore are addressed

in connection with the MSRB Approval Order.¹⁷⁰

8. Other Amendments

We are adopting a change to Rule 15c2-12(b)(4)(ii), as proposed, which currently refers to a NRMSIR with respect to the time period in which the Participating Underwriter must send the final official statement to any potential customer. Specifically, under Rule 15c2-12(b)(4), from the time the final official statement becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the official statement is available to any person from a NRMSIR, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in a primary offering is required to send to any potential customer, upon request, the final official statement. We are amending the language in Rule 15c2-12(b)(4)(ii), as proposed, to refer to the MSRB instead of to a NRMSIR. Accordingly, Participating Underwriters will have the time period from when the final official statement becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the official statement is available to any person from the MSRB, but in no case less than twenty-five days following the end of the underwriting period, to send the final official statement to a potential customer, upon request.

In addition, we are adopting similar changes to Rule 15c2-12(f)(3) and (f)(9), as proposed, which define the terms "final official statement" and "annual financial information," respectively. Rule 15c2-12(f)(3) defines the term "final official statement" to mean a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter and that sets forth information concerning, among other things, financial information or operating data concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the offering. Rule 15c2-12(f)(9) defines the term "annual financial information" to mean financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the

case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Both definitions allow for financial information or operating data to be set forth in the document or set of documents, or be included by specific reference to documents previously provided to each NRMSIR, and to a SID, if any, or filed with the Commission. We are amending Rule 15c2-12(f)(3) and (f)(9), as proposed, to replace references to each NRMSIR and the appropriate SID, if any, with references to the MSRB's Internet Web site. Accordingly, the amendments to paragraphs (f)(3) and (f)(9) of the Rule will allow issuers to reference financial information or operating data set forth in specified documents available to the public from the MSRB's Internet Web site (or filed with the Commission) as part of the final official statements and annual financial information, instead of referencing specific documents previously provided to each NRMSIR and SID.

We received one comment letter that addressed the proposed amendment to the definition of "final official statement."¹⁷¹ The commenter expressed technical concerns regarding the first sentence of paragraph (f)(3), noting that issuers obligated by undertakings made before the effective date of the final amendments would not have entered into a "written contract or agreement specified in paragraph (b)(5)(i)" (because paragraph (b)(5)(i) currently requires different terms of the continuing disclosure undertaking). However, we have not made the change suggested in the comment letter because we do not believe that it is necessary. We believe that the amendment as adopted makes clear that, in reporting any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of the Rule failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule, a final official statement must include any such failures over such period with respect to both written contracts or agreements entered into in conformance with paragraph (b)(5)(i) of the Rule prior to the effective date of the amendments and written contracts or agreements

¹⁶⁷ See GFOA Letter, at 3, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter, at 2.

¹⁶⁸ See GFOA Letter, at 3, and Multiple-Markets Letter, at 3.

¹⁶⁹ See SIFMA Letter, at 3.

¹⁷⁰ As noted above, the MSRB is required to file any new fees or changes to its fees with the Commission under Section 19(b) of the Exchange Act.

¹⁷¹ See NABL Letter, at 2-3.

entered into in conformance with paragraph (b)(5)(i) of the Rule as amended.

B. Other Comments

Two commenters¹⁷² questioned the Commission's authority to adopt the proposed amendments in light of the provisions of section 15B(d) of the Exchange Act, commonly referred to as the "Tower Amendment."¹⁷³ One of the commenters stated its belief that the Tower Amendment prohibits federal regulation of state issuers; the proposed amendments place "de facto regulatory power in the hands of a federal regulatory body;" and "the body in whose hands regulatory power is placed is a group constituted of those who stand to profit from underwriting of state-issued securities."¹⁷⁴ The other commenter stated that the proposed amendments, in combination, with the MSRB's EMMA Proposal, go further than the 1994 Amendments into the area protected by the Tower Amendment, because they establish, as the sole repository, a single Commission-supervised body, the MSRB, that is also subject to the Tower Amendment.¹⁷⁵ In addition, this commenter stated a belief that because the proposed amendments and the MSRB's related rule filing "are akin to a joint initiative between the SEC and the MSRB," they should be subject to the limits of both provisions of Section 15B(d). Because the commenter questions whether the Commission's and MSRB's proposals would in fact improve the availability of municipal

securities disclosure, it believed that it is "even harder to link the [proposed amendments and related MSRB rule filing] to preventing fraud, which is the basis for the Commission's authority."¹⁷⁶

Three commenters that supported the proposed amendments expressed their concern about any actions that would allow the Commission to impose disclosure requirements on issuers.¹⁷⁷ One of these commenters, however, expressly noted that "the proposal's sole purpose of having the MSRB operate a system to accept and post disclosure documents does not violate the Tower Amendment."¹⁷⁸

As we have noted in the past,¹⁷⁹ with the passage of the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress provided for a limited regulatory scheme for municipal securities.¹⁸⁰ Prior to the passage of the 1975 Amendments, municipal issuers were exempt from the registration and continuous reporting provisions of both the Securities Act of 1933¹⁸¹ and the Exchange Act. While municipal issuers continued to be exempt from all but the antifraud provisions of the federal securities laws, the 1975 Amendments required the registration of municipal securities brokers and dealers,¹⁸² and established the MSRB,¹⁸³ granting it the authority to promulgate rules governing the sale of municipal securities effected by brokers, dealers and municipal securities dealers.

While narrowly tailoring the authority of the MSRB to require that disclosure documents be provided to investors, Congress was careful to preserve the authority of the Commission under section 15(c)(2) of the Exchange Act.¹⁸⁴ Section 15B(d)(2) expressly indicates that "[n]othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title."¹⁸⁵ Thus, while prohibiting the Commission from requiring municipal issuers to file reports or documents prior to issuing securities in section 15B(d)(1),¹⁸⁶ Congress expanded the Commission's authority to adopt rules reasonably designed to prevent fraud. The

Commission does not believe the amendments to Rule 15c2-12 are inconsistent with the limitations in Exchange Act section 15B(d). As discussed in detail throughout this release, as well as the Proposing Release, the Commission believes that the amendments to Rule 15c2-12 are consistent with its Congressional mandate to, among other things, adopt rules reasonably designed to prevent fraud in the municipal securities market.¹⁸⁷ It is important for investors, market professionals, analysts, and others to have access to complete and timely descriptive information about municipal securities and municipal securities issuers. The proposed amendments are expected to improve access to information about municipal securities for those who effect transactions in the municipal markets. Better access to the disclosure is designed to allow them to compare that information against any other information disseminated with respect to municipal securities. In furtherance of the fundamental purpose of Rule 15c2-12, this accessibility should allow these market participants to more easily detect potentially fraudulent information. Finally, we do not believe that this Commission rulemaking implicates section 15B(d)(2), which applies only to the MSRB. Indeed, this rulemaking comports with section 15B(d)(2)'s explicit reservation of the Commission's authority under the Exchange Act to, among other things, promulgate regulations reasonably designed to prevent fraud, thereby protecting investors and preserving the integrity of the market for municipal securities.

C. Transition

The amendments to Rule 15c2-12 will require Participating Underwriters to reasonably determine whether continuing disclosure agreements for primary offerings occurring on or after the effective date of the amendments comply with the provisions of the amendments, including containing a specific reference to the MSRB as the sole repository to receive an issuer's or obligated person's continuing disclosure documents. Commenters generally confirmed that an issue exists with respect to the handling of continuing disclosure documents submitted under continuing disclosure agreements entered into by issuers and obligated persons prior to the effective date of the

¹⁷² See SPSE Letter, at 12-15, and DPC DATA Letter, at 1.

¹⁷³ The so-called "Tower Amendment," added Section 15B(d), 15 U.S.C. 78o-4(d) to the Exchange Act. It states: "(1) Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities. (2) The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title." 15 U.S.C. 78o-4(d).

¹⁷⁴ See DPC DATA Letter, at 1.

¹⁷⁵ See SPSE Letter, at 14.

¹⁷⁶ See SPSE Letter, at 14.

¹⁷⁷ See GFOA Letter, at 1, NASACT Letter, at 2, and NAHEFFA Letter, at 2.

¹⁷⁸ See GFOA Letter, at 3.

¹⁷⁹ See 1994 Proposing Release, *supra* note 113.

¹⁸⁰ The Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (June 4, 1975).

¹⁸¹ 15 U.S.C. 77a *et seq.*

¹⁸² 15 U.S.C. 78o-4(a)(1).

¹⁸³ 15 U.S.C. 78o-4(b)(1).

¹⁸⁴ 15 U.S.C. 78o(c)(2).

¹⁸⁵ 15 U.S.C. 78o-4(d)(2).

¹⁸⁶ 15 U.S.C. 78o-4(d)(1).

¹⁸⁷ Rule 15c2-12 was adopted under a number of Exchange Act provisions, including Section 15(c); 15 U.S.C. 78o(c).

final rule amendments.¹⁸⁸ To address issues that may arise if continuing disclosure documents submitted pursuant to existing continuing disclosure agreements must be filed in different locations from those documents submitted in connection with offerings occurring on or after the amendments' effective date, we requested comment on directing Commission staff to withdraw the "no action" letters provided to the current NRMSIRs and designating the MSRB as the sole NRMSIR.¹⁸⁹

While some commenters¹⁹⁰ supported this approach, others advocated various alternative transition processes.¹⁹¹ For example, one commenter suggested that the Commission could require any continuing disclosure made pursuant to the amended Rule provide that issuers make filings with the MSRB electronically with respect to new undertakings and all undertakings previously entered into by such issuers.¹⁹² In the alternative, this commenter suggested that the Commission issue an interpretive letter stating that an issuer that chooses to satisfy existing undertakings (namely, that documents be provided to NRMSIRs and SIDs) by transmitting them to the MSRB would be acting in a manner consistent with the Rule as amended.¹⁹³ Another commenter supported the proposed alternative approaches.¹⁹⁴ The Commission observes that under the commenter's primary suggestion, the Commission in effect would mandate the amendment of existing contracts without the parties' consent. We do not believe that it would be appropriate to interfere with the terms of existing contracts, which were the subject of negotiation among the parties. In addition, we note that the submission to the MSRB of continuing disclosure documents for past offerings would not occur until a subsequent offering occurs. As many issuers and obligated persons do not offer securities annually—many do so only occasionally—there would be a potentially lengthy period during which some issuers would supply continuing disclosure documents to the MSRB, while others would continue to supply them to the NRMSIRs and SIDs under

existing continuing disclosure agreements. The commenter's suggested alternative, that the Commission issue an interpretive letter stating that an issuer or obligated person that chooses to satisfy an existing undertaking by transmitting documents to the MSRB would be acting in a manner consistent with the Rule, as amended, would also be inappropriate because it would ignore the plain meaning of those existing contracts that require continuing disclosure documents to be provided to NRMSIRs and SIDs.

We believe that it would be inefficient, confusing and burdensome for issuers to submit continuing disclosure documents for offerings that occurred prior to the effective date of the final amendments to different locations than for offerings occurring afterwards. Moreover, having such a bifurcated system would not be in the best interests of investors and others who seek information about municipal issuers because it could result in the MSRB collecting only a portion of new information. We believe that one commenter's suggestion that new continuing disclosure agreements amend all prior disclosure agreements of the same issuer would incorporate existing continuing disclosure into the new centralized system only if and when an issuer returns to the market, and therefore is not as effective a transition mechanism as the Commission's approach.

We believe that it will be more efficient and effective to implement a sole repository expeditiously. In our view, this can best be accomplished by creating a mechanism by which issuers or obligated persons may comply with their existing undertakings by submitting their continuing disclosure documents to one location, thereby providing investors and municipal market participants with prompt and easy access to continuing disclosure documents at no charge. Our proposed approach to withdraw the "no action" letters to the existing NRMSIRs and have the MSRB be the sole NRMSIR for the submission of continuing disclosure documents pursuant to continuing disclosure agreements entered into prior to the effective date of the final amendments was supported by a number of commenters who addressed this issue.¹⁹⁵ We believe that, given the MSRB's proposal to implement the continuing disclosure feature of its EMMA system that we are approving today, it is reasonable and sensible for

the MSRB also to serve as the sole NRMSIR.

Accordingly, the Commission has determined to implement the approach that it outlined in the Proposing Release.¹⁹⁶ We hereby direct Commission staff to withdraw all "no action" letters recognizing existing NRMSIRs¹⁹⁷ as of 12 midnight (ET) of the day preceding the effective date of the final amendments to Rule 15c2-12. In addition, by amending Rule 15c2-12, we are designating the MSRB as the sole NRMSIR. Consequently, beginning on the effective date of the final amendments, continuing disclosure documents that are provided pursuant to existing continuing disclosure agreements—*i.e.*, those agreements entered into prior to the effective date of the final amendments (which typically reference the NRMSIRs as locations to which a submission should be made)—should be provided to the MSRB in its capacity as the sole NRMSIR.¹⁹⁸ Providing all submissions—for both past and future offerings—to the same location is expected to be less confusing to, and is expected to simplify the submission process for, issuers and other obligated persons subject to continuing disclosure agreements, as well as to investors and others who wish to obtain such information.¹⁹⁹

¹⁹⁶ See Proposing Release, 73 FR at 46146.

¹⁹⁷ See Letters from Brandon Becker, Director, Division of Market Regulation (n/k/a Division of Trading and Markets), Commission, to: Michael R. Bloomberg, President, Bloomberg L.P., dated June 26, 1995, and Aaron L. Kaplow, Vice President, Kenny S&P Information Services, dated June 26, 1995; and Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation (n/k/a Division of Trading and Markets), Commission, to: Peter J. Schmitt, President, DPC DATA, dated June 23, 1997, and John King, Chief Operating Officer, Interactive Data, dated December 21, 1999.

¹⁹⁸ Issuers or obligated persons with existing limited undertakings under Rule 15c2-12(d)(2)(ii)(B) that reference the MSRB rather than the NRMSIRs as the location to submit material event notices would not be affected by this approach because they would continue to submit such notices to the MSRB as stated in their limited undertaking. However, issuers or obligated persons with existing limited undertakings that reference the NRMSIRs as the location to submit material event notices would provide such notices to the MSRB in its capacity as the sole NRMSIR.

¹⁹⁹ We note that this approach will result in issuers located in the three states with SIDs providing continuing disclosure documents for undertakings entered into prior to the effective date of the final amendments to both the MSRB and the appropriate SID. This situation is unavoidable even though SIDs no longer will be referenced in the Rule as amended, because the obligation to provide documents to the appropriate SID under existing agreements is not being affected as a result of our direction to withdraw outstanding "no action" letters to the NRMSIRs and designating the MSRB as the sole NRMSIR for purposes of outstanding continuing disclosure agreements.

¹⁸⁸ See, *e.g.*, ICI Letter, at 4, NABL Letter, at 1-2, SPSE Letter, at 15, and Vanguard Letter, at 3.

¹⁸⁹ See Proposing Release, 73 FR at 46146.

¹⁹⁰ See SIFMA Letter, at 3-4, ICI Letter, at 3-4, and Vanguard Letter, at 2-3.

¹⁹¹ See GFOA Letter, at 3, NABL Letter, at 1-2, NASACT Letter, at 2, and NFMA Letter, at 1.

¹⁹² See NABL Letter, at 1-2.

¹⁹³ *Id.*

¹⁹⁴ See GFOA Letter, at 3.

¹⁹⁵ See ICI Letter, at 4, SIFMA Letter, at 4, and Vanguard Letter, at 3.

To assist issuers and obligated persons during the period between the date the Commission adopts the amendments and their effective date, municipal advisers and lawyers may wish to consider noting to their clients that the MSRB will become the only NRMSIR on the effective date and that all continuing disclosure documents should thereafter be provided to the MSRB alone. We note that the MSRB has indicated plans for an extensive outreach program to educate issuers and other obligated persons regarding use of its EMMA system's continuing disclosure service and to assist filers who have been accustomed to providing paper documents, which should help further alleviate the potential for transitional problems.²⁰⁰

In determining that the MSRB should become the sole NRMSIR on the effective date of the final amendments, we considered the continued accessibility to the public of the documents provided to the existing NRMSIRs. In the Proposing Release, we sought comment on whether there are concerns that the NRMSIRs would not retain the historical continuing disclosure documents and whether commenters anticipate any problems in obtaining such documents from the current NRMSIRs, if they were no longer recognized as such. In addition, we requested that, if commenters foresaw any such problems, they suggest alternative approaches for the retention of and access to historical information.

One NRMSIR requested that, in the event that the Commission determined no longer to designate it as a NRMSIR, it not have any continuing obligation to serve as a NRMSIR for existing documents and historical documents.²⁰¹ However, other commenters expressed a concern that such documents might not remain accessible.²⁰² The Commission understands that each NRMSIR is an information vendor that has been in that business for a number of years.²⁰³ While Rule 15c2-12, as amended, will no longer contemplate use of the current NRMSIRs for future continuing disclosure documents from issuers and obligated persons after the effective date of the final amendments, the Commission believes that the current NRMSIRs could determine it is in their interest to continue to provide public access to the continuing disclosure documents they obtained while serving as NRMSIRs, in order to be able to earn

revenue from their respective collections. As a practical matter, requests for such documents from the NRMSIRs by those who are not already subscribers to their services may be expected to decline over time, because more current continuing disclosure documents will become available without charge from the MSRB.

We also requested comment on any issues or problems that could arise if investors seek to obtain and compare information from multiple repositories—*e.g.*, historical continuing disclosure documents from the NRMSIRs and current continuing disclosure documents from the MSRB—and whether there are any alternative methods that would allow them to obtain complete information about municipal securities, including obtaining historical information. Two commenters, however, favored transferring continuing disclosure information to the MSRB if the NRMSIRs do not retain historical documents.²⁰⁴

We note that transitional issues regarding access to continuing disclosure documents generally are time limited. Investors presumably desire to obtain information for only the most recent years. Further, since final official statements of offerings subject to the Rule must disclose the failures of an issuer or obligated person to comply with continuing disclosure undertakings only for the previous five years,²⁰⁵ Participating Underwriters presumably do not desire access to older information. The Commission believes that the benefits that it anticipates in connection with the final amendments justify the transitory challenges of the Rule's conversion from the NRMSIR model to a model in which the MSRB will be the sole repository.

Some commenters advocated a short transition period²⁰⁶ whereas other commenters stressed that the Commission should allow sufficient time to allow small issuers to prepare for an electronic-only process.²⁰⁷ We have established July 1, 2009 as the effective date of these amendments.²⁰⁸ We believe that the approximately eight month period will be adequate to address commenters' concerns regarding the need for adequate time for issuers to

become informed about the MSRB's new role as the only NRMSIR; become familiar with the continuing disclosure component of EMMA; arrange to obtain necessary documents in or convert such documents into the electronic format designated by the MSRB; and generally adapt their policies and procedures for providing continuing disclosure documents.

IV. Paperwork Reduction Act

The Rule, as amended, contains "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²⁰⁹ In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted revisions to the currently approved collection of information titled "Municipal Securities Disclosure" (17 CFR 240.15c2-12) (OMB Control No. 3235-0372) to the Office of Management and Budget ("OMB"). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the Proposing Release, the Commission solicited comments on the collection of information requirements. The Commission noted that the estimates of the effect that the proposed amendments to the Rule would have on the collection of information were based on data from various sources, including the most recent PRA submission for Rule 15c2-12, the MSRB, and municipal industry participants. Although the Commission received twenty-three comment letters on the proposed rulemaking, none of the commenters addressed the estimates regarding its collection of information aspects. After further consideration, the Commission has refined the cost estimate that issuers could incur to obtain technology resources. The Commission continues to believe that all other burden estimates provided in the Proposing Release are appropriate.

A. Summary of Collection of Information

Prior to these amendments, under paragraph (b) of Rule 15c2-12, a Participating Underwriter is required: (1) To obtain and review an official statement "deemed final" by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one

²⁰⁰ See MSRB EMMA Proposal, *supra* note 12, 73 FR at 46165.

²⁰¹ See SPSE Letter, at 15.

²⁰² See Vanguard Letter, at 3, and ICI Letter, at 4.

²⁰³ See *supra* note 197.

²⁰⁴ See ICI Letter, at 4, and Vanguard Letter, at 3.

²⁰⁵ See Rule 15c2-12(f)(3), 17 CFR 15c2-12(f)(3).

²⁰⁶ See NFMA Letter, at 1, and Vanguard Letter, at 3.

²⁰⁷ See GFOA Letter, at 2, and NASACT, at 2.

²⁰⁸ Because commenters also addressed the proper length of the transition period in the context of the MSRB EMMA Proposal, we also are addressing the issue in the MSRB Approval Order, *supra* note 12.

²⁰⁹ 44 U.S.C. 3501 *et seq.*

exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to each NRMSIR (or, alternatively, to the MSRB in the case of material event notices and failure to file notices).²¹⁰ Under the Rule, as amended, Participating Underwriters will be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide continuing disclosure documents to the MSRB, in an electronic format and accompanied by identifying information, in each case as prescribed by the MSRB. The final rule amendments will not substantively change any of the current obligations of Participating Underwriters, except to the extent that Participating Underwriters will have to reasonably determine that the issuer or obligated person has agreed in the continuing disclosure agreement to provide continuing disclosure documents to a single repository, *i.e.*, the MSRB, instead of to multiple NRMSIRs.

The final amendments also will revise Rule 15c2-12(d)(2)(ii), which is part of an exemptive provision from the requirements of Rule 15c2-12(b)(5). Prior to the amendments adopted today, the exemption in Rule 15c2-12(d)(2) provided that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure documents pursuant to continuing disclosure agreements, would not apply to a primary offering if three conditions were met: (1) The issuer or the obligated person has \$10 million or less of debt outstanding;²¹¹ (2) the issuer or obligated person has undertaken in a written agreement or contract to provide: (A) Financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, including

financial information and operating data which is customarily prepared by such obligated person and is publicly available, upon request to any person or at least annually to the appropriate SID;²¹² and (B) material event notices to each NRMSIR or the MSRB, as well as the appropriate SID;²¹³ and (3) the final official statement identifies by name, address and telephone number the persons from which the foregoing information, data and notices can be obtained. The final amendments revise the limited undertaking set forth in 15c2-12(d)(2)(ii)(A) and (B) by deleting references to the NRMSIRs and SIDs and solely referencing the MSRB.

Accordingly, under the amendment to Rule 15c2-12(d)(2)(ii), a Participating Underwriter will be exempt from its obligations under paragraph (b)(5) of the Rule if an issuer or obligated person has agreed in its limited undertaking to provide financial information, operating data and material event notices to the MSRB in an electronic format as prescribed by the MSRB, and the exemption's other conditions are met.

B. Use of Information

The final amendments will provide for a single repository that receives submissions in an electronic format to encourage a more efficient and effective process for the collection and availability of continuing disclosure documents. The final amendments are intended to improve the availability of continuing disclosure documents that provide current information about municipal issuers and their securities. As a result, investors and other municipal securities market participants should be able to have ready and prompt access to the continuing disclosure documents of municipal securities issuers. This information could be used by retail and institutional investors; underwriters of municipal securities; other market participants, including broker-dealers and municipal securities dealers; municipal securities issuers; vendors of information regarding municipal securities; the MSRB and its staff; Commission staff; and the public generally.

C. Respondents

The final amendments require that a Participating Underwriter in a primary offering of municipal securities reasonably determine that the issuer or an obligated person has undertaken in a continuing disclosure agreement to submit specified continuing disclosure documents to the MSRB in an electronic

format and accompanied by identifying information, as prescribed by the MSRB. In the Proposing Release, we estimated that the respondents impacted by the paperwork collection associated with the Rule would consist of: 250 broker-dealers, 10,000 issuers, and the MSRB. The Commission included this estimated number of respondents in the Proposing Release and received no comments on this estimate. The Commission continues to believe that these estimates are appropriate.

D. Total Annual Reporting and Recordkeeping Burden

We estimate the aggregate information collection burden for the amended Rule to consist of the following:

1. Broker-Dealers

We estimate that the Rule, as amended, will impose a paperwork collection burden for 250 broker-dealers and will require each of these broker-dealers an average burden of one hour per year to comply with the Rule. This burden accounts for the time it will take a broker-dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to the MSRB.

In addition, we estimate that a broker-dealer will incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees who work on primary offerings of municipal securities about the final amendments to Rule 15c2-12. We estimate that it will take the internal compliance attorney approximately 30 minutes to prepare a notice describing the broker-dealer's obligations in light of the revisions to the Rule. The task of preparing and issuing a notice advising the broker-dealer's employees about the adopted amendments is consistent with the type of compliance work that a broker-dealer typically handles internally. Accordingly, we estimate that 250 broker-dealers each will incur a one-time, first-year burden of 30 minutes to prepare and issue a notice to its employees regarding the broker dealer's obligations under the adopted amendments.

Therefore, under the final amendments, the total burden on broker-dealer respondents will be 375

²¹⁰ 17 CFR 240.15c2-12(b).

²¹¹ 17 CFR 240.15c2-12(d)(2)(i).

²¹² 17 CFR 240.15c2-12(d)(2)(ii)(A).

²¹³ 17 CFR 240.15c2-12(d)(2)(ii)(B).

hours for the first year²¹⁴ and 250 hours for each subsequent year.²¹⁵ The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

2. Issuers

The Commission believes that issuers prepare annual filings and material event notices as a usual and customary practice in the municipal securities market. Issuers' undertakings regarding the submission of annual filings, material event notices, and failure to file notices that are set forth in continuing disclosure agreements contemplated by the Rule impose a paperwork burden on issuers of municipal securities. We estimate that, in connection with the final amendments to the Rule, 10,000 municipal issuers with continuing disclosure agreements will prepare approximately 12,000 to 15,000 annual filings yearly.²¹⁶

The Rule, as amended, provides that, under continuing disclosure agreements, continuing disclosure documents are to be submitted electronically to the MSRB, but does not revise the categories of persons who can submit the documents. Issuers can continue to submit continuing disclosure documents directly to the repository or can do so indirectly through an indenture trustee or a designated agent. An issuer might engage the services of a designated agent as a matter of convenience to advise it of the timing and type of continuing disclosure documents that need to be submitted to the repository. We estimate that approximately 30% of issuers will utilize the services of a designated agent to submit disclosure documents to the MSRB.

We estimate that, under the final amendments, an issuer will take approximately 45 minutes to submit an annual filing to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 30 minutes to prepare the annual filing, which is consistent with the prior paperwork

collection associated with the Rule, plus a new burden of an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository may prescribe. Therefore, under the final amendments, the total burden on issuers of municipal securities to submit 15,000 annual filings to the MSRB is estimated to be 11,250 hours.²¹⁷

We estimate that, under the final amendments, the MSRB annually will receive approximately 50,000 to 60,000 notices of the occurrence of a material event.²¹⁸ We also estimate that, under the final amendments, an issuer will take approximately 45 minutes to submit a material event notice to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 30 minutes to prepare the material event notice, which is consistent with the prior paperwork collection associated with the Rule, plus an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository may prescribe. Therefore, under the final amendments, the total burden on issuers to submit material event notices to the MSRB will require 45,000 hours.

We estimate that, under the final amendments, the MSRB annually will receive approximately 1,500 to 2,000 failure to file notices. We also estimate that, under the final amendments, an issuer will take approximately 30 minutes to submit a failure to file notice to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 15 minutes to prepare the failure to file notice, plus an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository would prescribe. Therefore, under the adopted amendments, the total burden on issuers to prepare and submit failure to file notices to the MSRB will be 1,000 hours.²¹⁹ Thus, the estimated 1,000 hours to prepare and submit failure to file notices to the MSRB represents a new paperwork burden of 1,000 hours.

Accordingly, under the final amendments, the total burden on issuers to submit annual filings, material event notices and failure to file notices to the

MSRB would be 57,250 hours.²²⁰ The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

3. The MSRB

Under the final amendments, the MSRB will be the sole repository and will receive disclosure documents in an electronic, rather than paper, format. We estimate that the burden on the MSRB to collect, index, store, retrieve, and make available the pertinent documents would be the number of hours that its employees would be assigned to the system for collecting, storing, retrieving, and making available the documents. In the Proposing Release, we noted that the MSRB advised that three full-time employees and one half-time employee would be assigned to these tasks and that each full-time employee would spend approximately 2,000 hours per year working on these tasks. Therefore, under the final amendments, the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the amendments will be 7,000 hours per year.²²¹ The Commission included this estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

4. Annual Aggregate Burden for Proposed Amendments

Accordingly, we estimate that the ongoing annual aggregate information collection burden for the amended Rule will be 64,500 hours.²²² The Commission included this estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

E. Total Annual Cost Burden

1. Issuers

The Commission expects that some issuers may be subject to some costs associated with the electronic

²¹⁴ (250 (maximum estimate of broker-dealers impacted by the final amendments) × 1 hour) + (250 (maximum estimate of broker-dealers impacted by the final amendments) × .5 hour (estimate for one-time burden to issue notice regarding broker-dealer's obligations under the final amendments)) = 375 hours.

²¹⁵ 250 (maximum estimate of broker-dealers impacted by the final amendments) × 1 hour = 250 hours.

²¹⁶ The estimate for the number of annual filings includes the submission of annual financial information or operating data described in Rule 15c2-12(d)(2)(ii)(A).

²¹⁷ 15,000 (maximum estimate of annual filings) × 45 minutes = 11,250 hours.

²¹⁸ This estimate for material event notices includes the submission of material event notices described in Rule 15c2-12(d)(2)(ii)(B).

²¹⁹ 2,000 (maximum estimate of failure to file notices) × 30 minutes = 1,000 hours.

²²⁰ 11,250 hours (estimated burden for issuers to submit annual filings) + 45,000 hours (estimated burden for issuers to submit material event notices) + 1,000 hours (estimated burden for issuers to submit failure to file notices) = 57,250 hours.

²²¹ 2,000 hours × 3.5 (3 full time employees and 1 half-time employee) = 7,000 hours.

²²² 250 hours (total estimated burden for broker-dealers) + 57,250 hours (total estimated burden for issuers) + 7,000 hours (total estimated burden for MSRB) = 64,500 hours. The initial first-year burden would be 64,625 hours: 375 hours (total estimated burden for broker-dealers in the first year) + 57,250 hours (total estimated burden for issuers) + 7,000 hours (total estimated burden for MSRB) = 64,625 hours.

submission of annual filings, material event notices and failure to file notices, particularly if they (or their agent) were submitting paper copies of these documents to the repositories. It is likely, however, that many issuers of municipal securities currently have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. For issuers that currently have such capability, the start-up costs to provide continuing disclosure documents to the MSRB will be minimal because they already possess the necessary resources internally. Some issuers may have the necessary computer equipment to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in the electronic format that it prescribes. For these issuers, the start-up costs will be the costs of upgrading or acquiring the necessary software. Issuers that presently do not provide their annual filings, material event notices and/or failure to file notices in an electronic format and that are currently sending paper copies of their documents to the repositories pursuant to their continuing disclosure agreements (or only providing disclosures upon request) may incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.*, accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs can vary depending on how the issuer elects to convert its continuing disclosure documents into an electronic format. An issuer may elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also may decide to undertake the work internally, and its costs will vary depending on the issuer's current technology resources.

The cost for an issuer to have a third-party vendor transfer its paper continuing disclosure documents into an appropriate electronic format can vary depending on what resources are required to transfer the documents into the appropriate electronic format. One example of such a transfer is the scanning of paper-based continuing disclosure documents into an electronic format. We estimate that the cost for an issuer to have a third-party vendor scan documents will be \$6 for the first page and \$2 for each page thereafter. We estimate that material event and failure to file notices consist of one to two

pages, while annual filings range from eight to ten pages to several hundred pages, but average about 30 pages in length. Accordingly, the approximate cost for an issuer to use a third party vendor to scan a material event notice or failure to file notice will be \$8 each, and the approximate cost to scan an average-sized annual financial statement will be \$64. We further estimate that an issuer will submit one to five continuing disclosure documents annually. We included these estimates in the Proposing Release and received no comments on them. We continue to believe that these estimates are appropriate.

Alternatively, an issuer that currently does not have the appropriate technology can elect to purchase the resources to electronically format the disclosure documents on its own.²²³ We estimate that an issuer's initial cost to acquire these technology resources could range from \$750 to \$4,300.²²⁴ Some issuers may have the necessary hardware to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in the electronic format that it prescribes. We estimate that an issuer's cost to update or acquire this software can range from \$50 to \$300.²²⁵ We included these estimates in the Proposing Release and received no comments on them. We continue to believe that these estimates are appropriate.

In addition, issuers without direct Internet access may incur some costs to obtain such access to submit the documents. However, Internet access is now broadly available to and utilized by

²²³ Generally, the technology resources necessary to transfer a paper document into an electronic format are a computer, scanner and possibly software to convert the scanned document into the appropriate electronic document format. Most scanners include a software package that is capable of converting scanned images into multiple electronic document formats. An issuer will need to purchase software only if the issuer (1) has a scanner that does not include a software package that is capable of converting scanned images into the appropriate electronic format, or (2) purchases a scanner that does not include a software package capable of converting documents into the appropriate electronic format.

²²⁴ The estimated cost for an issuer to upgrade or acquire the necessary technology to transfer its paper continuing disclosure documents into an electronic format is based on the following estimates for purchasing the necessary equipment from a commercial vendor: (1) \$500 to \$3,000 for a computer; (2) \$200 to \$1,000 for a scanner; and (3) \$50 to \$300 for software to submit documents in an electronic format.

²²⁵ Issuers that need solely to upgrade existing software may incur costs closer to the lower end of this estimate, while those issuers that need to purchase completely new software packages may incur costs closer to the higher end of this estimate.

businesses, governments, organizations and the public, and we expect that most issuers of municipal securities currently have Internet access. In the event that an issuer does not have Internet access, we estimate the cost of such access to be approximately \$50 per month. Otherwise, there are multiple free or low cost locations that an issuer can utilize, such as various commercial sites, which could help an issuer to avoid the costs of maintaining continuous Internet access solely to submit documents to the MSRB.

Accordingly, the Commission estimates that the costs to some issuers to submit continuing disclosure documents to a single repository in electronic format includes: (1) An approximate cost of \$8 per notice to use a third party vendor to scan a material event notice or failure to file notice, and an approximate cost of \$64 to use a third party vendor to scan an average-sized annual financial statement; (2) an approximate cost ranging from \$750 to \$4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format; (3) an approximate cost ranging from \$50 to \$300 solely to upgrade or acquire the software to submit documents in an electronic format; and (4) approximately \$50 per month to acquire Internet access.

For an issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format ("Category 1 issuers"), the total maximum external estimated cost such issuer will incur is \$752 per year.²²⁶ For an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally ("Category 2 issuers"), the total maximum external estimated cost such issuer will incur is \$4,900 for the first year and \$600 per year thereafter.²²⁷ As

²²⁶ [\$64 (cost to have third party convert annual filing into an electronic format) × 2 (maximum estimated number of annual filings filed per year per issuer)] + [\$8 (cost to have third party convert material event notice or failure to file notice into an electronic format) × 3 (maximum estimated number of material event or failure to file notices filed per year per issuer)] + [\$50 (estimated monthly Internet charge) × 12 months] = \$752. We estimate that an issuer would file one to five continuing disclosure documents per year. These documents generally consist of no more than two annual filings and three material event or failure to file notices.

²²⁷ [\$4,300 (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [\$50 (estimated monthly Internet charge) × 12 months] = \$4,900. After the initial year, issuers who acquire the technology to convert continuing disclosure

noted in the Proposing Release, the estimated total cost for issuers, if they all were classified as Category 1 issuers, is \$7,520,000 per year, and the estimated total cost for issuers, if they all were classified as Category 2 issuers, is \$49,000,000 for the first year and \$6,000,000 per year thereafter.²²⁸ We included these cost estimates in the Proposing Release and received no comments on them.

After further consideration, we believe that the actual total costs that are likely to be incurred by issuers to convert continuing disclosure documents into an electronic format will be less than the estimated maximum external costs described above. We note that these total annual cost estimates are based on the assumption that all issuers subject to continuing disclosure agreements would have to acquire technology resources necessary to submit continuing disclosure documents in an electronic format to the MSRB. In the Proposing Release, we noted our belief that this was a conservative estimate, and that in all likelihood, many issuers either currently submit continuing disclosure documents in an electronic format or currently have the necessary technology resources to submit continuing disclosure documents in an electronic format.

In this regard, we noted in the Proposing Release that approximately 30% of issuers currently utilize the services of a designated filing agent to submit documents electronically to NRMSIRs. Moreover, all NRMSIRs currently allow electronic filing of continuing disclosure documents. We further note that it was reported in 2002 that approximately 89% of all municipal governments in New York, Pennsylvania and West Virginia had access to computer technology and used it in their operations.²²⁹

Finally, even if all issuers currently lack the necessary technology, we

assume that they would be more likely to choose the lower cost option, *i.e.*, Category 1 with an estimated annual cost of \$7,520,000. To be conservative for purposes of the PRA, however, the Commission estimates that the annual costs for those issuers that need to acquire technology resources to submit documents to the MSRB will be approximately \$9,800,000²³⁰ for the first year after the adoption of the final amendments and approximately \$1,200,000²³¹ for each year thereafter.

Alternatively, an issuer may elect to use the services of a designated agent to submit continuing disclosure documents to the MSRB. As noted above, we believe that approximately 30% of municipal issuers that submit continuing disclosure documents today rely on the services of a designated agent. Generally, when issuers utilize the services of a designated agent, they enter into a contract with the designated agent for a package of services, including the submission of continuing disclosure documents, for a single fee. As noted in the Proposing Release, it is anticipated that five of the largest designated agents will submit documents electronically to the MSRB via a direct computer-to-computer interface. We estimate that the start-up cost for an entity to develop a direct computer-to-computer interface with the MSRB will range from approximately \$69,360 to \$138,720.²³² Thus, the maximum estimated total start-up cost of developing a direct computer-to-computer interface by each of the five designated agents for the submission of continuing disclosure documents to the MSRB is \$693,600. The Commission included these cost estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

The Commission believes that, in light of the estimated cost to develop

and implement a computer-to-computer interface with the MSRB, it is unlikely that issuers will elect to proceed with this approach given the availability of less expensive alternatives to submitting continuing disclosure documents electronically to the MSRB. However, some issuers may choose to submit their continuing disclosure documents to the MSRB through a designated agent. A designated agent may submit continuing disclosure documents along with identifying information to the MSRB on behalf of numerous issuers. Depending on its business model, a designated agent may submit continuing disclosure documents along with identifying information to the MSRB via the Internet or through a direct computer-to-computer interface. In either case, the issuer will incur a cost associated with the designated agent's electronic submission of the pertinent continuing disclosure document and any identifying information to the MSRB. We estimate that this cost is approximately \$16 per continuing disclosure document.²³³ We continue to believe that this estimate is appropriate.

2. MSRB

The MSRB will incur costs to develop the computer system to allow it to collect, store, process, retrieve, and make available continuing disclosure documents furnished to it by issuers of municipal securities. The MSRB's start-up costs associated with developing the portal for continuing disclosure documents, including hardware, an additional hosting site, and software licensing and acquisition costs, is estimated to be approximately \$1,000,000. In addition, the MSRB's annual operating costs for this system, excluding salary and other costs related to employees, is estimated to be approximately \$350,000. Accordingly, we estimate that the total costs for the MSRB is \$1,350,000 for the first year and \$350,000 per year thereafter, exclusive of salary and other costs related to employees.²³⁴ The

documents into an electronic format internally only will have the cost of securing Internet access. \$50 (estimated monthly Internet charge) × 12 months = \$600.

²²⁸ Total cost for Category 1 issuers: 10,000 issuers × \$752 (annual cost per issuer to have a third party convert continuing disclosure documents into an electronic format and for Internet access) = \$7,520,000. Total cost for Category 2 issuers: 10,000 issuers × \$4,900 (one-time cost to acquire technology to convert continuing disclosure documents into an electronic format and annual cost for Internet access) = \$49,000,000. 10,000 issuers × \$600 (annual cost per issuer for Internet access) = \$6,000,000.

²²⁹ See Timothy M. Kelsey, Michael J. Dougherty and Michael Hattery, *Information Technology Use by Local Governments in the Northeast: Assessment and Needs*, 40 Journal of Extension 5, October 2002 (available at <http://www.joe.org/joe/2002october/a4.shtml>) ("Journal of Extension").

²³⁰ 2,000 (Category 2 issuers) × \$4,900 = \$9,800,000. This estimate assumes 20% of issuers incur Category 2 costs at \$4,900 per issuer. To be conservative, we are using a number approximately double the percentage of issuers estimated in the Journal of Extension article. We acknowledge that this estimate yields a sum greater than the total Category 1 cost.

²³¹ 2,000 (Category 2 issuers) × \$600 = \$1,200,000.

²³² As noted in the Proposing Release, the MSRB estimated that it would take an entity approximately 240 to 480 hours of computer programming to develop the computer-to-computer interface with the MSRB. \$289 (hourly wage for a senior programmer) × 240 hours = \$69,360. \$289 (hourly wage for a senior programmer) × 480 hours = \$138,720. The \$289 per hour estimate for a senior programmer is from SIFMA's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

²³³ This estimate includes the cost of having the designated agent's compliance clerk submit electronically the pertinent continuing disclosure document and any identifying information to the MSRB. 15 minutes (.25 hours) (estimated time per document to gather identifying information) × \$62 (hourly wage for a compliance clerk) = \$15.50 (approximately \$16). The \$62 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

²³⁴ \$1,000,000 (cost to establish computer system) + \$350,000 (annual operation costs for computer system, excluding salary and other related costs for employees) = \$1,350,000 (first year cost to MSRB). After the first year, the only cost would be the

Commission included these cost estimates in the Proposing Release and did not receive any comments on them. The Commission continues to believe that these estimates are appropriate.

F. Retention Period of Recordkeeping Requirements

The final amendments to the Rule do not contain any recordkeeping requirements. However, as an SRO subject to Rule 17a-1 under the Exchange Act,²³⁵ the MSRB is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place.

G. Collection of Information Is Mandatory

The collection of information pursuant to the Rule, as amended, is a mandatory collection of information.

H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to the Rule, as amended, will not be confidential and will be publicly available.

V. Costs and Benefits of Proposed Amendments to Rule 15c2-12

In the Proposing Release the Commission considered certain costs and benefits of the amendments to Rule 15c2-12. As noted below, the Commission received a few general comments relating to the costs or benefits of the proposed amendments. As discussed below, the Commission is refining its cost analysis relating to the costs that issuers could incur to obtain technology resources. Other than this cost revision, the Commission is not modifying its costs and benefits analysis from that presented in the Proposing Release.

A. Benefits

Under the Rule, as amended, a Participating Underwriter will be prohibited from purchasing or selling municipal securities covered by the Rule in a primary offering, unless it has reasonably determined that the issuer of a municipal security has undertaken in a continuing disclosure agreement to provide continuing disclosure

annual operation cost of \$350,000. These costs do not include the salary and other overhead costs related to the employees who would maintain the system. The Proposing Release noted that MSRB staff advised Commission staff that the personnel costs associated with operating the portal for continuing disclosure documents will be approximately \$400,000 per year.

²³⁵ 17 CFR 240.17a-1.

documents to the MSRB.²³⁶ The Commission believes that providing for a single repository that receives submissions in an electronic format, rather than multiple repositories, will encourage a more efficient and effective process for the collection and availability of continuing disclosure information. In the Commission's view, a single electronic point of collection and accessibility of continuing disclosure documents can assist issuers and obligated persons in complying with their undertakings. Submission of continuing disclosure documents to one repository only rather than multiple repositories will reduce the resources issuers and obligated persons need to devote to the process of gathering and submitting continuing disclosure documents. Because the final amendments will provide for the electronic submission and availability of continuing disclosure documents, the costs to issuers and obligated persons of gathering and submitting this information ultimately could be reduced because these entities no longer will have to gather and submit documents in a paper format.

Most commenters were supportive of the proposed amendments and believed that a single repository for the collection, storage, and dissemination of continuing disclosure documents would greatly benefit investors and other municipal market participants.²³⁷ Commenters indicated that the benefits of the proposed amendments include: (1) Increased transparency of municipal securities disclosure;²³⁸ (2) simplifying and improving the efficiency of filing municipal disclosure information;²³⁹ (3) improved accessibility to municipal disclosure information for investors and

²³⁶ Under the adopted amendments to paragraph (d)(2)(ii) of the Rule, a Participating Underwriter would be exempt from its obligations under paragraph (b)(5) of the Rule as long as an issuer or obligated person has agreed in its limited undertaking that the publicly available financial information or operating data described in paragraph (d)(2)(ii)(A) of the Rule would be submitted to the MSRB annually, instead of upon request to any person or at least annually to the appropriate SID, if any, and that the material event notices described in paragraph (d)(2)(ii)(B) of the Rule would be submitted to the MSRB, instead of to each NRMSIR or the MSRB and to the appropriate SID, if any, and as long as the other conditions of the exemption are met.

²³⁷ See GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, Treasurer of the State of Connecticut Letter, IAA Letter, NASACT Letter, EDGAR Online Letter, NFMA Letter, NAHEFFA Letter, ICI Letter, Texas Mac Letter, and Multiple-Markets Letter.

²³⁸ See Treasurer of the State of Connecticut Letter, at 1, and IAA Letter, at 1.

²³⁹ See Texas MAC Letter, at 1, and IAA Letter, at 2.

other market participants;²⁴⁰ (4) assisting broker-dealers and mutual funds in meeting their regulatory obligations;²⁴¹ and (5) reducing the potential for fraudulent activities.²⁴² In addition, commenters noted that the submission of municipal disclosure information in an electronic format with indexing information would: (1) Make finding and using municipal disclosure information easier for investors and other municipal market participants;²⁴³ and (2) help facilitate the creation of new value-added services by municipal disclosure vendors.²⁴⁴

As described more fully in section IV. above, we estimate that the ongoing annual information collection burden under the adopted amendments will be 64,500 hours.²⁴⁵ This represents a reduction of 59,350 burden hours from the immediately preceding collection of information.²⁴⁶ This overall reduction in the Rule's paperwork burden—and the costs associated with that burden—principally will benefit issuers or obligated persons.

The Commission also believes that having a single repository that receives and makes available submissions in an electronic format will provide ready and prompt access to this information by investors and municipal securities market participants. Investors and market participants will be able to go solely to one location to retrieve continuing disclosure documents rather than having to approach multiple locations, thereby allowing for a more convenient means to obtain such information. In addition, we believe that having one repository that electronically collects and makes available all continuing disclosure documents will increase the likelihood that investors and other market participants will obtain more complete information about municipal securities, thereby decreasing the potential for fraud.

We expect that a single repository that receives submissions in an electronic format could simplify compliance with regulatory requirements by broker-dealers and others, such as mutual funds, by providing them with consistent availability of continuing disclosure documents from a single

²⁴⁰ See SIFMA Letter, at 2, NASACT Letter, at 1, and ICI Letter, at 3.

²⁴¹ See SIFMA Letter, at 2, and ICI Letter, at 3.

²⁴² See ICI Letter, at 3.

²⁴³ See ICI Letter, at 3, and IAA Letter, at 3.

²⁴⁴ See Multiple-Markets Letter, at 2.

²⁴⁵ The estimated annual information collection burden for the first year under the final amendments is 64,625 hours.

²⁴⁶ For the first year, there is a reduction of 59,225 burden hours relative to the immediately preceding collection of information.

source. Information vendors (including those NRMSIRs and SIDs that had been information repositories for Rule 15c2–12 purposes) and others also will have ready access to all continuing disclosure documents that they in turn can use in any value-added products that they create. The Commission also expects that having a single repository that receives submissions in an electronic format will make municipal disclosure information more accessible for all municipal market participants.

Moreover, providing for a single repository may reduce the paperwork and other costs that NRMSIRs currently incur because they no longer will have to maintain personnel and other resources solely in connection with their status as a NRMSIR. Also, the Commission believes that the proposed amendments may encourage the dissemination of information in the information services markets by providing easier access to continuing disclosure documents. As a result, there potentially may be an increase in the number of information vendors disseminating continuing disclosure documents and offering value-added products because the cost of entry into the municipal securities information services market may be reduced.

B. Costs

The Commission does not expect broker-dealers to incur any additional recurring costs as a result of the Rule 15c2–12 amendments, because the amendments will not alter substantively the existing Rule's requirements for these entities, except with respect to the place to which issuers would agree to make filings. The final amendments will change the location where the continuing disclosure documents of issuers or obligated persons will be submitted pursuant to continuing disclosure agreements. As noted above, we estimate that the annual information collection burden for each broker-dealer under the Rule will be one hour. This annual burden is identical to the burden that a broker-dealer previously had under the Rule. Accordingly, we estimate that it will cost each broker-dealer \$270 annually to comply with the Rule, as amended.²⁴⁷

We further estimate that a broker-dealer may have a one-time internal cost

associated with having an in-house compliance attorney prepare and issue a memorandum advising the broker-dealer's employees who work on primary offerings of municipal securities about the amendments to Rule 15c2–12. Our estimate is that it will take internal counsel approximately 30 minutes to prepare this memorandum, for a cost of approximately \$135.²⁴⁸

We believe that the ongoing obligations of broker-dealers under the Rule will be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. We do not believe that a broker-dealer will have any recurring external costs associated with the amendments to the Rule.

The Commission received one comment letter regarding the obligations of a broker-dealer under the revised Rule, particularly with respect to its reasonably determining that the issuer or obligated person has contractually agreed to provide identifying information as prescribed by the MSRB.²⁴⁹ This commenter stated that this requirement would not be unreasonably burdensome on broker-dealers that are Participating Underwriters. The Commission included in the Proposing Release the foregoing cost estimate regarding a broker-dealer's obligations under the Rule, as amended, and received no comments regarding this cost estimates.

Although Rule 15c2–12 relates to the obligations of broker-dealers, issuers or obligated persons indirectly could incur costs as a result of the adopted amendments. In connection with today's amendments, issuers of municipal securities will undertake in their continuing disclosure agreements to provide continuing disclosure documents to the MSRB, either directly or indirectly through an indenture trustee or a designated agent. In either case, some issuers may be subject to the costs associated with the electronic filing of annual filings, material event notices and failure to file notices, particularly if they (or their agent) were submitting paper copies of these documents to the NRMSIRs. For those issuers that delivered their continuing disclosure documents electronically to the NRMSIRs, there is expected to be minimal change in costs as a result of the Rule's new requirement that documents be submitted electronically.

Issuers that had not been providing their annual filings, material event notices and/or failure to file notices in

an electronic format and were sending paper copies of their documents to the NRMSIRs pursuant to their continuing disclosure agreements may incur some costs to obtain electronic copies of such documents from the party who prepared them or, alternatively, to have a paper copy converted into an electronic format. These costs will vary depending on how the issuer elects to convert their continuing disclosure documents into an electronic format. An issuer can elect to have a third-party vendor transfer their paper continuing disclosure documents into the appropriate electronic format. An issuer also can decide to undertake the work internally, and its costs will vary depending on the issuer's technology resources. An issuer also will need to have Internet access to submit documents electronically and will incur the costs of maintaining such service, if the issuer currently does not have Internet access, unless it relies on other sources of Internet access.

It is likely, however, that most issuers of municipal securities currently possess the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. For issuers that currently have such capability, the start-up costs to provide continuing disclosure documents to the MSRB will be minimal because they already will have the necessary resources internally.

As described more fully in section IV. above, we estimate that the costs to some issuers to submit continuing disclosure documents to the MSRB in an electronic format may include: (1) An approximate cost of \$8 per notice to use a third party vendor to scan a material event notice or failure to file notice, and an approximate cost of \$64 to use a third party vendor to scan an average-sized annual financial statement; (2) an approximate cost ranging from \$750 and \$4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format; (3) approximately \$50 to \$300 to upgrade or acquire the software to submit documents in an electronic format; (4) approximately \$50 per month to acquire Internet access; and (5) an approximate cost of \$16 per continuing disclosure document to have a designated agent submit electronically continuing disclosure documents and identifying information to the MSRB. As noted in the Proposing Release, for an issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format, the maximum external estimated cost such issuer will incur is \$752 per

²⁴⁷ 1 hour (estimated annual information collection burden for each broker-dealer) × \$270 (hourly cost for a broker-dealer's internal compliance attorney) = \$270. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

²⁴⁸ See Section IV.D.1., *supra*.

²⁴⁹ See SIFMA Letter, at 3.

year.²⁵⁰ As noted in the Proposing Release, for an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally, the maximum external estimated cost such issuer will incur is \$4,900 for the first year and \$600 per year thereafter.²⁵¹ As noted in the Proposing Release, the estimated total cost for issuers, if they all were classified as Category 1 issuers, is \$7,520,000 per year, and the estimated total cost for issuers, if they all were classified as Category 2 issuers, is \$49,000,000 for the first year and \$6,000,000 per year thereafter.²⁵² We included these cost estimates in the Proposing Release and received no comments on them. In the Proposing Release, the Commission indicated that we believe that most issuers either currently submit continuing disclosure documents in an electronic format, or currently have the necessary technology resources to submit continuing disclosure documents in an electronic format. Accordingly, we believe that the actual total costs that will be incurred by issuers to convert continuing disclosure documents into an electronic format will be less than the estimated maximum external costs described above and discussed more fully in section IV. above.

The Commission estimates that the annual costs for those issuers that need

to acquire technology resources to submit documents to the MSRB will be approximately \$9,800,000²⁵³ for the first year after the adoption of the final amendments and approximately \$1,200,000²⁵⁴ for each year thereafter.

Also, as more fully described in section IV. above, the total estimated cost of five designated agents to develop computer-to-computer interfaces for the submission of documents to the MSRB is \$693,600. The Commission included this cost estimate in the Proposing Release and received no comments regarding it. The Commission continues to believe that this estimate is appropriate.

Issuers or obligated persons also will have to provide certain identifying information to the repository pursuant to their undertakings in continuing disclosure agreements. As described more fully in section IV. above, we estimate that each issuer will submit one to five continuing disclosure documents annually to the MSRB, for a maximum estimated annual labor cost of approximately \$232.50 per issuer,²⁵⁵ which equates to a total maximum annual cost of \$2,325,000 for all issuers ($\$232.50 \times 10,000$ issuers). The Commission included these cost estimates for issuers in the Proposing Release and received no comments regarding these estimates. The Commission continues to believe that these estimates are appropriate.

The Commission expects that the costs to issuers may vary somewhat, depending on the issuer's size. In the Proposing Release, we noted our belief that any such difference would be attributable to the fact that larger issuers may tend to have more issuances of municipal securities; thus, larger issuers may tend to submit more documents than smaller issuers. We indicated that

the costs of submitting documents under the proposal could be greater for larger issuers. Although no commenters took issue with any of the specific cost estimates set forth in the Proposing Release, two commenters discussed generally the potential costs of aspects of the proposed amendments, particularly with respect to smaller issuers.²⁵⁶ One of these commenters noted that small issuers relying on the exemption contained in paragraph (d)(2) of the Rule would incur increased costs associated with the electronic filing of the information set forth in the exemption.²⁵⁷ Prior to today's amendments, the exemption in paragraph (d)(2) of the Rule would not apply to a primary offering if, among other conditions, the issuer or obligated person has undertaken in a written agreement or contract to provide financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, including financial information and operating data which is customarily prepared by such obligated person and is publicly available, upon request to any person or at least annually to the appropriate SID.²⁵⁸ After today's amendments, Participating Underwriters seeking to utilize the exemption will need to reasonably determine that such issuer or obligated person has undertaken to provide such information to the MSRB annually. The amendment to paragraph (d)(2) of the Rule does not affect the nature of a Participating Underwriter's obligation to reasonably determine that a small issuer has undertaken to deliver continuing disclosure documents to fulfill the conditions of the exemption; rather, it affects what the Participating Underwriter needs to determine regarding the undertaking with respect to the location where such documents are to be sent. Specifically, the final amendments do not revise the provision limiting the commitment to provide annual financial or operating data only if such information is customarily prepared by such obligated person and is publicly available. We recognize that one effect of the amendments will be that some small issuers will submit annual financial information and operating data to the MSRB when currently they do not regularly submit such disclosures to any repository. We do not believe that electronically formatting information a small issuer already has and makes publicly

²⁵⁰ [$\$64$ (cost to have third party convert annual filing into an electronic format) $\times 2$ (maximum estimated number of annual filings filed per year per issuer)] + [$\$8$ (cost to have third party convert material event notice or failure to file notice into an electronic format) $\times 3$ (maximum estimated number of material event or failure to file notices filed per year per issuer)] + [$\$50$ (estimated monthly Internet charge) $\times 12$ months] = \$752. We estimate that an issuer would file one to five continuing disclosure documents per year. These documents generally consist of no more than two annual filings and three material event or failure to file notices.

²⁵¹ [$\$4,300$ (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [$\$50$ (estimated monthly Internet charge) $\times 12$ months] = \$4,900. After the initial year, issuers who acquire the technology to convert continuing disclosure documents into an electronic format internally only will have the cost of securing Internet access. $\$50$ (estimated monthly Internet charge) $\times 12$ months = \$600.

²⁵² Total cost for Category 1 issuers: $10,000$ issuers $\times$ \$752 (annual cost per issuer to have a third party convert continuing disclosure documents into an electronic format and for Internet access) = \$7,520,000. Total cost for Category 2 issuers: $10,000$ issuers $\times$ \$4,900 (one-time cost to acquire technology to convert continuing disclosure documents into an electronic format and annual cost for Internet access) = \$49,000,000. $10,000$ issuers $\times$ \$600 (annual cost per issuer for Internet access) = \$6,000,000. To provide an estimate of the total costs to issuers that would not be under-inclusive, we assumed that all 10,000 issuers are Category 1 issuers and Category 2 issuers.

²⁵³ $2,000$ (Category 2 issuers) $\times$ \$4,900 = \$9,800,000. This estimate assumes 20% of issuers incur Category 2 costs at \$4,900 per issuer. To be conservative, we are using a number approximately double the percentage of issuers estimated in the *Journal of Extension* article. We acknowledge that this estimate yields a sum greater than the total Category 1 cost.

²⁵⁴ $2,000$ (Category 2 issuers) $\times$ \$600 = \$1,200,000.

²⁵⁵ 5 (maximum estimated number of continuing disclosure filed per year per issuer) $\times$ \$62 (hourly wage for a compliance clerk) $\times 45$ minutes (.75 hours) (average estimated time for compliance clerk to submit a continuing disclosure document electronically) = \$232.50. The \$62 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. In order to provide an estimate of total costs for issuers that would not be under-inclusive, the Commission elected to use the higher end of the estimate of annual submissions of continuing disclosure documents.

²⁵⁶ See NABL Letter, at 2, and GFOA Letter, at 2.

²⁵⁷ See NABL Letter, at 2.

²⁵⁸ 17 CFR 240.15c2-12(d)(2)(ii)(A).

available will be a significant burden. In addition, we do not believe that the final amendments would result in small issuers providing voluminous filings. Further, the costs that these issuers could incur to send documents electronically to the MSRB are included in the cost estimates for issuers discussed above. The only difference between the prior provision and the amended Rule is that, while issuers previously provided such information and data upon request, they now must provide it to the MSRB annually. The other commenter noted that some smaller issuers may have to purchase new software to submit electronic documents, but it further stated that the overall savings that an electronic-based repository will provide will benefit state and local governments and authorities.²⁵⁹

Further, the Commission does not anticipate that issuers will incur any costs associated with the need to revise the template for continuing disclosure agreements. The Proposing Release noted that, based on conversations between Commission staff and NABL staff, NABL members advised that the cost of revising the template for continuing disclosure agreements to reflect the rule amendments will be insignificant and thus unlikely to be passed on to issuers. We received no comments regarding this estimate and continue to believe that it is appropriate.

As discussed in section IV. above, the MSRB will incur costs to develop the computer system to allow it to collect, store, process, retrieve, and make available continuing disclosure documents furnished to it by issuers of municipal securities. We stated in the Proposing Release that the MSRB's start-up costs associated with developing the portal for continuing disclosure documents, including hardware, an additional hosting site, and software licensing and acquisition costs, will be approximately \$1,000,000; that the MSRB's ongoing costs of operating the system, including allocated costs associated with such items as office space and licensing fees, will be approximately \$1,350,000 for the first year and \$350,000 per year thereafter; and that the MSRB's personnel costs associated with operating the portal for continuing disclosure documents will be approximately \$400,000 per year.²⁶⁰ We received no comments regarding

these estimates and continue to believe that they are appropriate.

Some NRMSIRs and other vendors of municipal disclosure information may incur costs in transitioning their business models as a result of the final amendments that call for the MSRB to serve as the single repository for continuing disclosure documents. In the Proposing Release, we noted that any NRMSIR that provided municipal disclosure documents as its primary business model could face a significant decline in its business, and thus in income, as a result of the proposed amendments, as well as the possible withdrawal of the "no action" letters issued to the NRMSIRs and the designation of the MSRB as the sole NRMSIR for existing continuing disclosure agreements. As a result, the NRMSIRs could experience an immediate decline in income with respect to those parts of their business that provide municipal disclosure documents to persons who request them. We also noted that NRMSIRs could have some costs if they continued to maintain historical continuing disclosure information that they have already received under existing continuing disclosure agreements. Two commenters that are NRMSIRs submitted comment letters opposing the proposed amendments.²⁶¹ One of these commenters acknowledged generally that the proposed amendments could affect its business model.²⁶² However, neither of these commenters provided any specific cost estimates of the impact of the proposed amendments on their operations. In addition, one potential consequence of the final amendments is that there could be fewer value-added products available to investors, market participants and others, and the potential reduction in such products is not quantifiable.²⁶³ The Commission included a discussion of the potential costs for NRMSIRs under the amended Rule in the Proposing Release and received no specific comments addressing these costs. The Commission believes that the potential costs discussed in the Proposing Release are still appropriate.

Finally, under the final amendments, Rule 15c2-12 no longer will refer to SIDs. The rule amendments will not affect the legal obligations of issuers or obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate

SID, if any, that may be required under the appropriate state law. In addition, the final amendments will have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to the effective date of today's amendments to the Rule, to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that may be required under the appropriate state law. SIDs are membership organizations and use information submitted to them in products for their members. While SIDs can charge fees for requested documents, we do not believe that this is a primary source of revenue for them. As discussed above, the Commission received a number of comments regarding the proposed removal of references to SIDs from the Rule.²⁶⁴ However, none of these comments included any discussions of the cost implications of removing references to SIDs from the Rule. In the Proposing Release, the Commission indicated that it does not expect that SIDs will experience a decline in operations or incur any costs as a result of the proposed amendments. The Commission received no comments regarding this statement and we continue to believe that this statement is appropriate.

In summary, the Commission estimates that the total annual cost for all respondents in the first year, under the amended Rule, is approximately \$14,602,350.²⁶⁵ The Commission also estimates that the total annual cost for all respondents after the first year, under the amended Rule, is approximately \$4,275,000.²⁶⁶

²⁶⁴ See GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

²⁶⁵ (\$33,750 (estimated annual cost for broker-dealers in year one) + ((\$9,800,000 (estimated annual cost for issuers to acquire technology resources) + \$2,325,000 (estimated annual cost for all issuers' labor hours) + \$693,600 (estimated one-time cost for development of designated agents computer interface)) total estimated annual costs for issuers in year one) + \$1,750,000 (maximum estimated annual cost for the MSRB in year one)) = \$14,602,350.

²⁶⁶ (\$1,200,000 (estimated annual cost for issuers to convert documents into an electronic format) + \$2,325,000 (estimated annual cost for all issuers' labor hours)) estimated annual costs for issuers) + \$750,000 (maximum estimated annual cost for the MSRB)) = \$4,275,000.

²⁵⁹ See GFOA Letter, at 2.

²⁶⁰ This figure represents the estimated personnel costs associated with the MSRB's devoting three and one-half persons to the operation of the continuing disclosure portal.

²⁶¹ See DPC Data Letter and SPSE Letter.

²⁶² See DPC Data Letter at 1.

²⁶³ See Section VI. *infra* for a discussion of the competitive impact of the amendments on the NRMSIRs.

VI. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act²⁶⁷ requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Exchange Act²⁶⁸ requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, we considered the proposed amendments to Rule 15c2-12 in light of the standards set forth in the above-noted Exchange Act provisions. We solicited comment on whether, if adopted, the proposed amendments would result in any anti-competitive effects or would promote efficiency, competition, and capital formation. We asked commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition, or capital formation that might result from adoption of the proposed amendments.

We believe that the amendments to the Rule will help make the municipal securities disclosure process more efficient and help conserve resources for municipal security issuers, as well as for investors and market participants. Under the regulatory framework that existed prior to today's amendments, issuers of municipal securities in their continuing disclosure agreements undertook to submit continuing disclosure documents to four separate NRMSIRs, and they submitted such documents in paper or electronic form. The Commission anticipates that the final rule amendments likely will promote the efficiency of the municipal disclosure process by reducing the resources municipal security issuers will need to devote to the process of submitting continuing disclosure documents.

As noted above, the Commission has long been interested in reducing the potential for fraud in the municipal securities market. At the time the Commission adopted Rule 15c2-12 in

1989 and adopted the 1994 Amendments, disclosure documents were submitted in paper form. The Commission believed that, in such an environment where document retrieval would be handled manually, the establishment of one or more repositories could be beneficial in widening the retrieval and availability of information in the secondary market, since the public could obtain the disclosure documents from multiple locations. The Commission's objective of deterring the potential for fraud by facilitating greater availability of municipal securities information remains unchanged.

However, there have been significant inefficiencies in the current use of multiple repositories that likely have affected the public's ability to retrieve continuing disclosure documents.²⁶⁹ In this regard, the Commission noted in the 1989 Adopting Release that "the creation of multiple repositories should be accompanied by the development of an information linkage among these repositories" so as to afford "the widest retrieval and dissemination of information in the secondary market."²⁷⁰ Although the Commission in the 1989 Adopting Release supported the development of an information linkage among the repositories, none was established to help broaden the availability of the disclosure information. Also, since the adoption of the 1994 Amendments, there have been significant advancements in technology and information systems, including the use of the Internet, to provide information quickly and inexpensively to market participants and investors. In this regard, the Commission believes that the use of a single repository to receive, in an electronic format, and make available continuing disclosure documents in an electronic format will substantially and effectively increase the availability of municipal securities information about municipal issues and enhance the efficiency of the secondary trading market for these securities.

In addition, we believe that having a single repository for electronically submitted information will provide investors, market participants, and others with a more efficient and convenient means to obtain continuing disclosure documents and will help increase the likelihood that investors, market participants, and others will make more informed investment decisions regarding whether to buy, sell or hold municipal securities. The Commission believes that the final

amendments will foster a more efficient means of municipal disclosure and, as a result, the Commission is approving the adoption of the proposed amendments to Rule 15c2-12.

With respect to the Exchange Act goal of promoting competition, the Commission notes that, when we adopted Rule 15c2-12 in 1989, we strongly supported the development of one or more central repositories for municipal disclosure documents.²⁷¹ The Commission "recognize[d] the benefits that may accrue from the creation of competing private repositories," and indicated that "the creation of central sources for municipal offering documents is an important first step that may eventually encourage widespread use of repositories to disseminate annual reports and other current information about issuers to the secondary markets."²⁷² Further, when we adopted the 1994 Amendments, the Commission stated that the "requirement to deliver disclosure to the NRMSIRs and the appropriate SID also allay[ed] the anti-competitive concerns raised by the creation of a single repository."²⁷³

There have been significant advances in technology and information collection and delivery since that time, as discussed throughout this release and the Proposing Release, that indicate that having multiple repositories may not be necessary because the widespread availability and dissemination of information can be achieved through different, more efficient, means. Because the current environment differs markedly from the time when Rule 15c2-12 was adopted in 1989 and subsequently amended in 1994, the Commission believes that it is appropriate to adopt an approach that utilizes the significant technological advances, such as the development and use of various electronic formats, which have occurred in the intervening years.

The Commission's adoption of amendments to the Rule to provide for the use of a single repository for continuing disclosure documents will help further the Exchange Act objective of promoting competition because information about municipal securities, provided in an electronic format, will be more widely available to market professionals, investors, information vendors, and others as a result of the final amendments. For example, the Commission believes that competition

²⁷¹ See 1989 Adopting Release at 54 FR 28807, *supra* note 18. See also 1994 Proposing Release, *supra* note 113.

²⁷² See 1989 Adopting Release, *supra* note 18. See also 1994 Proposing Release, *supra* note 113.

²⁷³ See 1994 Amendments, *supra* note 21.

²⁶⁷ 15 U.S.C. 78c(f).

²⁶⁸ 15 U.S.C. 78w(a)(2).

²⁶⁹ See *supra* note 35.

²⁷⁰ See 1989 Adopting Release, *supra* note 18.

among vendors may increase because vendors can utilize this information to provide value-added services to municipal market participants. Our adoption of amendments to the Rule also may promote competition in the purchase and sale of municipal securities because the greater availability of information, delivered electronically through a single repository, may instill greater investor confidence in the municipal securities market. Moreover, this greater availability of information also may encourage improvement in the completeness and timeliness of issuer disclosures and may foster interest in municipal securities by individual and institutional customers. As a result, more investors may be attracted to this market sector and broker-dealers may compete for their business.

The Commission received two comment letters from NRMSIRs that raised concerns about the competitive effects of the proposed amendments.²⁷⁴ The primary concerns, raised by both commenters, relate to the MSRB's role as the sole repository of continuing disclosure documents and the competitive effects this would have on existing vendors of municipal disclosure information. One of these commenters stated that the Commission's proposal "would allow the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format."²⁷⁵ In addition, this commenter noted that the Commission's proposal would place the MSRB "in direct competition with commercial vendors who have served the market as practical implementers of Rule 15c2-12 without any subsidy for more than a decade."²⁷⁶ The other commenter expressed similar sentiments and cited to the Commission's statements in adopting Rule 15c2-12 in 1989 and amendments to the Rule in 1994, which discussed possible anti-competitive concerns over the creation of a single repository.²⁷⁷ This commenter noted its view that eliminating the NRMSIR function would upset the balance between its current business model and have an impact on its ability to provide value-added products and services.²⁷⁸ It disputed the Commission's view that the potential burdens on competition would be justified by the proposed amendments' adoption because, in its view, the current issues with municipal

disclosure lie in the quality and timeliness of the information that is filed.²⁷⁹ The commenter also urged the Commission to adopt an alternative approach.²⁸⁰ Under its proposal, the MSRB would not be the sole repository for municipal disclosure information.²⁸¹ Instead, the commenter proposed having an unspecified entity serve as a central electronic post office for municipal disclosure information where "issuers and obligors would file documents through a single electronic format" and such entity "would then forward the centrally-filed documents in real time to the NRMSIRs."²⁸² The commenter expressed no opinion regarding the identity of the entity that should serve as the central electronic post office or how such entity would be chosen.²⁸³

Although these commenters raised concerns about the competitive impact of the proposed amendments, circumstances have changed since we last considered Rule 15c2-12 amendments in 1994, as discussed throughout this release and in the Proposing Release. The NRMSIRs did not develop a linkage, technology developments have occurred to make it easier to access information; and access to municipal information remains costly and not easy to obtain for many individuals. For these reasons, we believe that there should be one repository. We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors can utilize the MSRB in its capacity as a repository as a means to collect information from the continuing disclosure documents to create value-added products for their customers.²⁸⁴ Commercial vendors will be able to readily access the information made available by the MSRB to re-disseminate it or use it in whatever value-added products they may wish to provide. In fact, a single repository in which documents are submitted in an

electronic format may encourage the private information vendors to disseminate municipal securities information by reducing the cost of entry into the information services market. Existing vendors may need to make some adjustments to their infrastructure, facilities, or services offered. However, some vendors may determine that they no longer need to invest in the infrastructure and facilities necessary to collect and store continuing disclosure documents, and new entrants into the market will not need to obtain the information from multiple locations, but rather can readily access such information from one centralized source. Thus, all vendors are expected to be able to obtain easily continuing disclosure documents and to be able to compete in providing value-added services. With respect to the comment regarding the "quality and timeliness" of the information issuers file, the Commission believes that the greater availability of information which will result from the final amendments to the Rule also may encourage improvement in the completeness and timeliness of disclosures by issuers and obligated persons and may foster interest in municipal securities by retail and institutional customers.

We previously stated that we would specifically consider the competitive implications of the MSRB becoming a repository.²⁸⁵ In addition, we stated that if we were to conclude that the MSRB's status as a repository might have adverse competitive implications, we would consider whether we should take any action to address these effects.²⁸⁶ As noted earlier, we recognize that competition with respect to certain information services regarding municipal securities that are provided by the existing NRMSIRs may decline should the MSRB become the central repository. The two commenters that raised competitive concerns suggested that a decrease in competition could occur as a result of the Commission's rulemaking.²⁸⁷ We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors can utilize the MSRB in its capacity as a repository as a means to collect information from the continuing

²⁷⁹ See SPSE Letter, at 7-8.

²⁸⁰ See SPSE Letter, at 3-5.

²⁸¹ See SPSE Letter, at 4.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ The Commission notes that both the DPC DATA Letter and the SPSE Letter raised concerns with the potential subscription fees associated with having the MSRB as the single repository. The Commission notes that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any subscription fees for a data stream that it proposes as well as any changes to those fees.

²⁷⁴ See DPC DATA Letter and SPSE Letter.

²⁷⁵ See DPC DATA Letter, at 1.

²⁷⁶ See DPC DATA Letter, at 2.

²⁷⁷ See SPSE Letter, at 5-7.

²⁷⁸ See SPSE Letter, at 7.

²⁸⁵ See Securities Exchange Act Release No. 28081, *supra* note 131.

²⁸⁶ *Id.*

²⁸⁷ See DPC DATA Letter and SPSE Letter.

disclosure documents to create value-added products for their customers.

Regarding the comment that our proposal would permit the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single format, we note that the MSRB must file with the Commission under section 19(b) of the Exchange Act the format it proposes to prescribe and any changes to that format. Thus, the format that the MSRB proposes to prescribe, and any subsequent changes to that format, would have to be consistent with the Exchange Act. With regard to the comments favoring a central electronic post office, as we noted above, we believe that this approach is less likely to achieve the benefits of the proposed amendments. For example, with a central post office there would continue to be no single location to which investors, particularly individuals, could turn for free access to information regarding municipal securities. Instead, individuals or entities that wish to obtain such information would find it necessary first to access the central post office to find out what documents might be available from NRMSIRs and SIDs and then to contact one or more NRMSIRs or SIDs and pay their fees to obtain the document or documents they seek. This would be a less efficient process than that contemplated by the final amendments, in which interested persons could directly access, view and print for free continuing disclosure documents from one place—the MSRB's Internet site.

We do not believe that there are competitive implications that will uniquely apply to the MSRB in its capacity as the sole repository as opposed to any another entity that could be the sole repository. In fact, we believe that, because the MSRB will be the sole repository, its status as an SRO will provide an additional level of Commission oversight, as changes to its rules relating to continuing disclosure documents will have to be filed for Commission consideration as a proposed rule change under section 19(b) of the Exchange Act. Accordingly, we believe that any competitive impact that could result from the MSRB's status as the sole repository would be justified by the benefits that such status could provide.

We, therefore, believe that any potential effect on competition that may arise from the adoption of the Rule 15c2–12 amendments is justified by the more efficient and effective process for the collection and availability of continuing disclosure documents that will result. A single repository for the

electronic collection and availability of these documents will foster the Exchange Act objective of promoting competition by simplifying the method of submission of continuing disclosure documents to one location and making the documents more readily accessible to investors and others by virtue of the documents being in an electronic format.

We believe that the proposed amendments may have a positive effect on capital formation by municipal securities issuers. The Rule is addressed to the obligations of broker-dealers participating in a primary offering of municipal securities (*i.e.*, Participating Underwriters). Because continuing disclosure documents will be submitted electronically to a single repository, investors and other market participants will be able to obtain information about these issuers more readily than they could in the past. They no longer will have to contact several NRMSIRs to make sure that they have obtained complete information about the municipal issuer. Easier access to continuing disclosure documents regarding municipal securities may provide investors and other market participants with more complete information about municipal issuers. Moreover, this ready availability of continuing disclosure documents may encourage investors to consider purchasing new issuances of municipal securities because they will be able to readily access information from a single repository and review that information in light of other available information when making an investment decision, decreasing the potential for fraud. As a result, we believe that our amendments to Rule 15c2–12 will help foster the Exchange Act goal of capital formation.

We proposed to delete references to the SIDs in Rule 15c2–12. Since we are adopting amendments to the Rule that provide for a single repository for the electronic collection and availability of continuing disclosure documents that are aimed at improving disclosure in the municipal securities market, we believe that it is no longer necessary to require in the Rule that Participating Underwriters reasonably determine that issuers and obligated persons have contractually agreed to provide continuing disclosure documents to the appropriate SID.

Five commenters specifically addressed the deletion of SIDs from the Rule.²⁸⁸ Most of them commented that the MSRB should provide a data feed to SIDs of documents related to issuers in

²⁸⁸ See GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

their states in order that issuers who may be required by their states to send continuing disclosure documents to a SID need not provide them to both the MSRB and a SID.²⁸⁹ They believed this would be more efficient for both issuers and SIDs and result in more complete and consistent data availability of information from SIDs and the MSRB. Furthermore, some of these commenters suggested that there should be no charge to SIDs to receive such a data feed.²⁹⁰ We agree that it is important for the document collections of the MSRB and SIDs to be consistent to avoid uneven access to information that could result, depending on the source from which continuing disclosure documents were obtained. However, the specific operations of the MSRB's repository, such as data feeds, are related to the MSRB's operation of the collection system and are subject to the rule filing process under section 19(b) of the Exchange Act and are not an issue before us with respect to the amendments to the Rule.²⁹¹

We note that the amendments will not affect the legal obligations of issuers and obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, that are required under the relevant state law. In addition, the amendments will have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to any effective date of the amendments to the Rule to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that are required under the relevant state law. Accordingly, the Commission does not believe that its deletion of references to SIDs in Rule 15c2–12 will have any potential effect on efficiency, competition or capital formation.

VII. Regulatory Flexibility Act Certification

The Commission certified, under section 605(b) of the Regulatory Flexibility Act,²⁹² that, when adopted, the proposed amendments to the Rule would not have a significant economic impact on a substantial number of small entities. This certification was set forth in section VIII. of the Proposing

²⁸⁹ See GFOA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

²⁹⁰ See GFOA Letter and Multiple-Markets Letter.

²⁹¹ See MSRB Approval Order, *supra* note 12.

²⁹² 5 U.S.C. 605(b).

Release.²⁹³ The Commission solicited comments regarding this certification and received no comments. The Commission continues to believe this certification is appropriate.

VIII. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78o(c), 78o-4, and 78w(a)(1), the Commission is adopting amendments to § 240.15c2-12 of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

Text of Rule Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78l, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.15c2-12 is amended by:

■ a. Revising paragraph (b)(4)(ii), the introductory text of paragraph (b)(5)(i), and paragraphs (b)(5)(i)(A) and (B);

■ b. In the introductory text of paragraph (b)(5)(i)(C) and in paragraph (b)(5)(i)(D) remove the phrase “to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any,”;

■ c. In paragraph (b)(5)(i)(C) remove the phrase “, and to whom it will be provided”;

■ d. Adding paragraph (b)(5)(iv);

■ e. Revising paragraph (d)(2)(ii); and

■ f. Revising paragraphs (f)(3) and (f)(9).

The additions and revisions read as follows.

§ 240.15c2-12 Municipal securities disclosure.

* * * * *

(b) * * *

(4) * * *

(ii) The time when the official statement is available to any person from the Municipal Securities Rulemaking Board, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

(A) Annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;

* * * * *

(iv) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board.

* * * * *

(d) * * *

(2) * * *

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a

written agreement or contract for the benefit of holders of such municipal securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board:

(A) At least annually, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and

(B) In a timely manner, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

(C) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board; and

* * * * *

(f) * * *

(3) The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal

²⁹³ See Proposing Release, *supra* note 3.

Securities Rulemaking Board's Internet Web site or filed with the Commission.

* * * * *

(9) The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

* * * * *

By the Commission.

Dated: December 5, 2008.

Florence E. Harmon,
Acting Secretary.

Note: Exhibit A to the Preamble will not appear in the Code of Federal Regulations

Exhibit A

Key to Comment Letters Cited in Adopting Release Amendment to Municipal Securities Disclosure (File No. S7-21-08)

1. Letter from Fran Busby to 21st Century Disclosure Initiative, Commission, dated October 7, 2008 ("Busby Letter").
2. Letter from Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 24, 2008 ("GFOA Letter").
3. Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, The Vanguard Group, Inc. ("Vanguard"), to Florence E. Harmon, Acting Secretary, Commission, dated September 24, 2008 ("Vanguard Letter").

4. Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("SIFMA Letter").
5. Letter from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC ("DAC"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("DAC Letter").
6. Letter from Louis V. Eccleston, President, Standard & Poor's Securities Evaluations, Inc. ("SPSE"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("SPSE Letter").
7. Letter from Frank Chin, Chair, Municipal Securities Rulemaking Board ("MSRB"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("MSRB Letter").
8. Letter from William A. Holby, President, National Association of Bond Lawyers ("NABL"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("NABL Letter").
9. Letter from Jennifer S. Choi, Assistant General Counsel, Investment Adviser Association ("IAA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("IAA Letter").
10. Letter from Denise L. Nappier, Treasurer, State of Connecticut, to Christopher Cox, Chairman, Commission, dated September 22, 2008 ("Treasurer of the State of Connecticut Letter").
11. Letter from Richard T. McNamar, Chief Executive Officer, e-certus, Inc. ("e-certus"), to Christopher Cox, Chairman, Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 ("e-certus Letter").
12. Letter from Laura Slaughter, Executive Director, Municipal Advisory Council of Texas ("Texas MAC"), to Christopher Cox, Chairman, Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 ("Texas MAC Letter").
13. Letter from Thomas H. McTavish, President, National Association of State Auditors, Comptrollers and Treasurers ("NASACT"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("NASACT Letter").
14. Letter from K.W. Gurney, Director, Ohio Municipal Advisory Council ("OMAC"), to Christopher Cox, Chairman,

Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 ("OMAC Letter").

15. Letter from Karrie McMillan, General Counsel, Investment Company Institute ("ICI"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("ICI Letter").

16. Letter from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, and Steven Fillebrown, Director of Research, Investor Relations and Compliance, New Jersey Healthcare Financing Authority, on behalf of the National Association of Health and Education Facilities Finance Authorities ("NAHEFFA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 ("NAHEFFA Letter").

17. Letter from Cate Long, Multiple-Markets ("Multiple-Markets"), to Florence E. Harmon, Acting Secretary, Commission, dated September 19, 2008 ("Multiple-Markets Letter").

18. Letter from Robert Yolland, Chairman, National Federation of Municipal Analysts ("NFMA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 19, 2008 ("NFMA Letter").

19. Letter from Peter J. Schmitt, Chief Executive Officer, DPC DATA, Inc. ("DPC DATA"), to Florence E. Harmon, Acting Secretary, Commission, dated September 18, 2008 ("DPC DATA Letter").

20. Letter from Philip D. Moyer, Chief Executive Officer and President, EDGAR Online, Inc. ("EDGAR Online"), to Christopher Cox, Chairman, Commission, and to Ernesto Lanza, Senior Associate General Counsel, MSRB, dated September 9, 2008 ("EDGAR Online Letter").

21. Letter from Al B. Dickman, Professional Investor, to Florence E. Harmon, Acting Secretary, Commission, dated September 5, 2008 ("Dickman Letter").

22. Letter from Elizabeth V. Mooney, to Florence E. Harmon, Acting Secretary, Commission, dated August 21, 2008 ("Mooney Letter").

23. Letter from Aramintha Grant, to Florence E. Harmon, Acting Secretary, Commission, dated August 17, 2008 ("Grant Letter").

[FR Doc. E8-29336 Filed 12-12-08; 8:45 am]

BILLING CODE 8011-01-P



Federal Register

**Monday,
December 15, 2008**

Part III

Department of Commerce

**National Oceanic and Atmospheric
Administration**

15 CFR Part 902

50 CFR Parts 679 and 680

**Pacific Halibut Fisheries; Bering Sea and
Aleutian Islands King and Tanner Crab
Fisheries; Groundfish Fisheries of the
Exclusive Economic Zone Off Alaska;
Individual Fishing Quota Program;
Western Alaska Community Development
Quota Program; Recordkeeping and
Reporting; Permits; Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 679 and 680**

[Docket No. 080302360–7686–03]

RIN 0648–AT91

Pacific Halibut Fisheries; Bering Sea and Aleutian Islands King and Tanner Crab Fisheries; Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Western Alaska Community Development Quota Program; Recordkeeping and Reporting; Permits

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements new recordkeeping and reporting requirements; a new electronic groundfish catch reporting system, the Interagency Electronic Reporting System, and its data entry component, eLandings; the integration of eLandings with existing logbook requirements and future electronic logbooks; a variety of fisheries permits provisions and revisions to regulations governing the Bering Sea and Aleutian Islands Management Area Crab Rationalization Program, including fee calculations; a revision to a Sitka Pinnacles Marine Reserve closure provision; and a revision to a groundfish observer provision regarding at-sea vessel-to-vessel transfers. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) and other applicable law.

DATES: Effective January 14, 2009.

ADDRESSES: Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or by calling the Alaska Region, NMFS, at 907–586–7228, or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS and by e-

mail to David_Rostker@omb.eop.gov, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs and the commercial scallop fishery under the Fishery Management Plan for the Scallop Fishery off Alaska. The fishery management plans were prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce under authority of the Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The FMPs are implemented by regulations at 50 CFR parts 679 and 680. General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the “Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea,” which was signed at Ottawa, Canada, on March 2, 1953, and was amended by the “Protocol Amending the Convention,” signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

Background and Need for Action

Refer to the proposed rule preambles for further description and detail. The background and need for this action were described in detail in the preamble to the original proposed rule published in the **Federal Register** on June 29, 2007 (72 FR 35748) and in a supplemental proposed rule published on September 24, 2008 (73 FR 55368) and are not repeated here. The supplemental proposed rule explains the reorganization of materials within the current recordkeeping and reporting (R&R) regulatory text to integrate electronic and non-electronic requirements. The original proposed rule’s comment period ended July 30, 2007. NMFS received two emails

containing nine comments on the original proposed rule. Responses to all nine comments were provided in the supplemental proposed rule. NMFS agreed with five of these comments and made the suggested changes in the supplemental proposed rule. The supplemental proposed rule’s comment period ended October 24, 2008. NMFS received one comment by email which is summarized under “Response to Comments.”

In summary, this final rule:

- Institutes the Interagency Electronic Reporting System (IERS) and its data entry component, eLandings. eLandings replaces the current Shoreside Processor Electronic Logbook Report (SPELR) for entering groundfish catch information and Crab Rationalization Program (CR) crab information. The use of eLandings removes and replaces the use of the shoreside processor daily cumulative production logbook (DCPL), weekly production reports, daily production reports, and aggregated mothership fish tickets. The operators of catcher/processor vessels and motherships will be required to use a combination of eLandings and the appropriate DCPL to record fishery information;

- Allows for the future use of electronic logbooks (ELBs) by operators of catcher vessels, catcher/processors, and motherships to replace the daily fishing logbook (DFL) and the DCPL when used with eLandings. Equipment and operational requirements in conjunction with the new ELBs are updated to provide the process and criteria by which a private-sector vendor could submit ELB software programs for approval by NMFS Alaska Region;

- Reorganizes IFQ crab landing report regulations by removing them from 50 CFR part 680 and incorporating them into eLandings regulations at 50 CFR part 679, so that all regulations pertaining to eLandings will be found in one set of regulations;

- Adds a requirement for Registered Crab Receivers to submit an annual Crab Rationalization Program Registered Crab Receiver Ex-vessel Volume and Value Report;

- Revises regulations that pertain to permits in the fisheries off Alaska. Most of the changes are technical or administrative in nature, e.g., clarification of existing regulations on how to amend or surrender a permit, and do not change existing requirements;

- Clarifies vessel restrictions in the Sitka Pinnacles Marine Reserve and how those restrictions apply to halibut and sablefish IFQ permit holders;

- Revises requirements regarding at-sea transfer of an observer to enhance safety; and

- Technical revisions to regulations to correct cross-references and other regulatory text. Miscellaneous revisions also include removal of outdated text and codifying existing reporting practices for catch weighing and vessel monitoring system requirements.

Response to Comments

Comment 1: The data entry time limits for trawl and longline catcher/processors, the provision that requires submission “by noon each day to record the previous day’s discard and disposition information,” is unworkable. An example of how this reporting deadline is a problem is when a tow or set is retrieved just before midnight. An observer cannot start monitoring and sampling a tow until it is being processed, and in some cases an observer’s work shift may end in the morning. This means that the vessel crew may not know about discard and bycatch estimates until the afternoon of the day after the previous day’s tow has been retrieved. We request the time limit for when data is entered in eLandings or the DCPL be changed from “by noon each day to record the previous day’s discard and disposition information” to “by midnight each day to record the previous day’s discard and disposition information.”

Response: NMFS agrees with this comment. NMFS understands the impracticability of submitting information prematurely and that time limits must correspond with fishing operations. Therefore, NMFS revises regulations at § 679.5(c)(3) and (c)(4) for trawl, longline, or pot catcher/processors to change the time limit for data entry in eLandings or the DCPL from “by noon each day to record the previous day’s discard and disposition information” to “by midnight each day to record the previous day’s discard and disposition information.”

Changes from the Supplemental Proposed Rule

Since publication of the proposed rules, NMFS published a final rule on September 16, 2008 (73 FR 53390) that revised the definition for an active period for catcher/processors, motherships, shoreside processors, and SFPs and eliminated the check-in/check-out report submittal requirement for motherships and catcher/processors that have onboard an operating vessel monitoring system. To ensure regulatory consistency and accuracy with the September 16, 2008, final rule, NMFS is substituting the words “when active”

for “checked-in” in the two places they appear in § 679.5(e)(9)(ii) and (e)(10)(iv).

This final rule corrects a mistaken cross reference in § 679.40(h)(3)(i), which are regulations describing sablefish and halibut offload obligations. The supplemental proposed rule incorrectly cited to § 679.5(e)(8)(i)(K), which describes the obligation to record discard or disposition information, which is unrelated to offloads. The final rule correctly references § 679.50(e)(7)(i)(E)(6), which describes entry of delivery information.

Other revisions are made by this final rule to ensure that electronic data submittal procedures are accurately and completely described. These revisions are as follows:

eLandings relies on computers. The supplemental proposed rule, under § 679.5(e), specified procedures for submitting information if a user’s computer fails. The final rule clarifies that if a hardware, software, or Internet failure occurs, these procedures should be used. When a user is reporting on groundfish other than sablefish, the user must report the information as “non-IFQ groundfish” in paragraph 679.5(e)(1)(ii).

The final rule also removes a sentence in paragraph 679.5(e)(1)(ii) that stated “A User who for any reason is unable to properly submit a landing report or production report through eLandings must record the information in the DCPL until network connections are restored.” This sentence is inappropriate because NMFS has determined it is unnecessary to specify by regulation where a user records temporary information. The final rule also adds “other NMFS-approved software” to paragraphs 679.5(e)(1)(i) and (e)(1)(ii) because in the future, NMFS may approve additional software programs that will work as well as the eLandings system.

The final rule, in Table 2b to part 679, corrects the mis-spelled Latin term for red king crab and removes the check marks for three crab species that incorrectly indicated that the crab species are Crab Rationalization (CR) crab. The complete list of CR crab may be viewed at Table 1 to part 680.

The final rule reorganizes certain requirements for the Registered Crab Receiver (RCR) Ex-vessel Volume and Value Report at § 680.5(m). Since the report must be filed electronically, the final rule deletes the requirement for a paper report. The final rule reorganizes paragraphs (m)(iii)(B) and (C) to include retro payments, e.g., payments for crab made subsequent to the original payment, as part of the value of crab

purchases instead of as payment and value information. Finally, paragraph (m)(4) is revised in the final rule to correct a website address that has been changed since publication of the proposed rules.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c (Halibut Act) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final rule is consistent with the Council’s authority to allocate, monitor, and manage halibut catches among fishery participants in the waters in and off Alaska.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Final Regulatory Flexibility Analysis (FRFA)

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA incorporates the IRFA and a summary of the analyses completed to support the action; no comments were received on the IRFA. Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Reason and Justification for the Rule

The FRFA describes in detail the objectives and legal basis for the rule, and characterizes the small and non-small regulated entities that participate in the fishery. A description of the action, the reasons why it is being considered, and a statement of the objectives and legal basis for this action are contained earlier in the preamble and are not repeated here.

Number of Small Entities to Which the Final Rule Would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. As required by the RFA, NMFS has estimated the numbers of small entities that may be directly regulated by this action. Counts of small catcher vessel and catcher/processor entities are based on 2006 revenue estimates from the Alaska Fisheries Science Center. Counts of shoreside processors and stationary floating processors (SFPs) are based on 2006 information on plants and plant ownership from the NMFS Alaska Region. Counts of other more specialized categories of small entities are explained when they occur below. In general, the estimates of small entity numbers described in the following paragraphs are believed to be high for several reasons. Each vessel or processing plant is treated as a separate entity; however, this does not consider that a firm may own multiple vessels or plants. Moreover, revenue estimates do not take into account the revenues that an entity may have earned in waters

outside of Alaska, or in non-fishing activities. Finally, estimates do not take into account potential affiliations among entities.

Cooperative membership and joint venture affiliations are common among Alaskan fishing firms. In the absence of detailed information on ownership and affiliations, and on revenue from fishing or other activities outside of Alaska, NMFS has chosen to make estimates that are conservative, to avoid undercounting the number of small entities.

The FRFA evaluates the following regulatory amendments:

1. Provide an option for operators of trawl catcher vessels and catcher/processors, longline or pot catcher vessels and catcher/processors, and motherships operating in the GOA and the BSAI in the EEZ off the coast of Alaska to substitute an ELB for the DFL or DCPL that is currently required.

2. Provide the process and criteria by which a private software vendor could get ELB software approved for use in the Alaska Region groundfish fisheries.

3. Implement regulations for the eLandings data entry component of IERS to be used for reporting commercial fishery landings and production data and allow fishery participants to use the Internet to enter data only once for subsequent distribution to the Alaska Department of Fish and Game (ADF&G), the International Pacific Halibut Commission (IPHC), and NMFS, as appropriate.

4. Reorganize regulations for logbooks to provide complete information for each logbook in its own section in order to make the regulations more accessible and easier to use.

5. Provide uniform language and revise permit-related regulations governing fishing activities in fisheries off the coast of Alaska. The minor revisions improve enforcement of the regulations at 50 CFR part 679, by revising text, where necessary, such that the regulations are specific, especially regarding permits and permit-related issues.

6. Revise 50 CFR part 680 by removing IFQ crab landing report regulations for incorporation into the description of IERS at § 679.5 IERS and by adding a requirement for a CR Registered Crab Receiver Ex-vessel Volume and Value Report.

7. Revise a groundfish observer provision regarding at-sea vessel-to-vessel transfers.

8. Make miscellaneous revisions to fishing regulations at 50 CFR parts 679 and 680.

Electronic Logbooks (ELBs)

NMFS will provide the process and criteria by which a private-sector software vendor could obtain approval for ELB software in the Alaska Region groundfish fisheries.

NMFS will provide an option for operators of trawl catcher vessels and catcher/processors, longline or pot catcher vessels and catcher/processors, and motherships operating in the GOA and the BSAI in the EEZ off the coast of Alaska to substitute an ELB for the DFL or DCPL that is currently required.

This action will allow ELBs for voluntary use by fishery participants to replace the DFL for trawl gear catcher vessels and longline or pot gear catcher vessels. ELBs will also be allowed for use by fishery participants to replace the DCPL used by trawl gear catcher/processors, longline or pot gear catcher/processors, and motherships to voluntarily fulfill daily catch recordkeeping and reporting requirements.

The participants associated with this aspect of the action include an estimated 771 small catcher vessels, 11 small catcher/processors, and no small motherships. The catcher vessel and catcher/processor estimates may be high, because they do not take account of affiliations among entities.

NMFS considered two alternatives for implementation of the ELBs: the no-action (or status quo) and action alternatives. The action alternative allows participants to voluntarily use an ELB instead of a DFL or DCPL, but does not require firms to incur additional costs, because all processors participating in Federal fisheries have access to a computer. The no-action alternative was considered, but rejected, because it did not meet the action objective of creating a better regulatory environment for the introduction and use of ELB software for compliance with NMFS' reporting requirements.

NMFS interacted with the fishing industry on the use of ELBs during a pilot project described in the RIR/IRFA wherein a trawl gear ELB created by a private vendor was used by catcher vessels. An early version of this analysis included a provision requiring that fishing operations using the ELB software file a report with NMFS within 24 hours of delivering their product. This provision was eliminated from the alternatives following industry consultations during the preparation of the IRFA. The provision was expected to impose an undue burden on operations that were using the software voluntarily and perhaps slow its adoption rate. An examination of

existing response rates indicated that about 32 percent of these reports have been received by NMFS within 24 hours of the landing, and about 73 percent have been received within 48 hours of the landing. The action alternative relaxes a constraint on the public, and may reduce data entry costs relative to the DFL and DCPL.

Interagency Electronic Reporting System (IERS)

With this final rule, NMFS implements regulations for the eLandings data entry component of IERS to be used for reporting commercial fishery landings and production data and allow fishery participants to use the Internet to enter data only once for subsequent distribution to the ADF&G, the IPHC, and NMFS, as appropriate.

NMFS estimates that this action will directly regulate 11 small catcher/processors, 80 small shoreside processors, five small SFPs, no small motherships, and 184 small Registered Buyers. Under this action, these entities will be required to report electronically using the IERS software.

The Registered Buyer estimates were prepared as follows. There are 206 IFQ Registered Buyers expected to use IERS to record their halibut IFQ and halibut CDQ deliveries under provisions of this action. An examination of the names of the Registered Buyers suggests that at least 22 are large entities under the Small Business Administration (SBA) criteria (i.e., processors subject to the 500 employee SBA criterion). The remaining Registered Buyers appear to be small shoreside firms or fishing operations. Thus, 184 Registered Buyers are estimated to be small for RFA purposes. This is likely to be an overestimate of the number of small entities among the Registered Buyers directly regulated by adoption of the IERS.

NMFS considered two alternatives for the IERS and eLandings: the status quo and action alternatives. The status quo alternative, if retained, would not have required firms to begin using IERS for Federal reporting purposes. However, since State regulations will require firms to begin reporting in-state deliveries of harvests with the IERS system, retention of the status quo alternative would be of no advantage to small entities. Indeed, these small entities could be in the position of having to conform to two separate reporting standards. Moreover, a significant proportion of the harvest from Federal waters is delivered to onshore or inshore processors, who would be using the IERS to input these records.

The preferred alternative requires processors to use IERS and eLandings to report data from Federal fisheries, but only imposes small additional costs. IERS is a joint project of ADF&G, IPHC, and NMFS. If NMFS adopted an alternative system, confusion would result for the fishing industry and industry costs would be increased. Additional alternatives in this instance would compromise our ability to meet the objectives of the action. Because the costs of this action are minor, it is difficult to identify additional alternatives with significant cost savings.

Regulatory text reorganization

NMFS reorganizes and revises § 679.5(a) and (c), such that each of the six groundfish logbooks is described clearly and completely in a separate section of regulatory text. This action also makes the regulations easier for the public to use. Regulations for processor forms also are revised and reorganized in this rule. Prior to this final rule, these regulations were arranged into tables by data element relating to multiple logbooks and forms. The reader had to consult several places in the regulations to find complete requirements for any given logbook or form. This action consolidates all of the requirements for each form and logbook into individual sections in § 679.5.

The small entities directly regulated by this action include 80 shoreside processors, five SFPs, 11 catcher/processors, no motherships, and 771 catcher vessels.

NMFS considered two alternatives for the reorganization of regulations: the status quo and action alternatives. Under the status quo alternative, the regulations at § 679.5 would remain without reorganization. The regulations at § 679.5 would remain arranged in tables by data element relating to multiple logbooks and forms causing the reader to consult several places in the regulations to find complete requirements for any given logbook or form. Under the regulatory scenario of the status quo alternative, participants would likely face increased R&R regulatory uncertainty and a loss of efficiency. Under the action alternative, NMFS will reorganize and revise regulations at § 679.5 such that each of the six groundfish logbooks is described in regulatory text separately, completely, and clearly. Under the regulatory scenario of the action alternative, participants would enjoy increased R&R regulatory certainty and increased efficiency.

Permits

NMFS is unifying the language and revising permit-related regulations governing fishing activities in fisheries off the coast of Alaska. These minor revisions will improve enforcement of the regulations at 50 CFR part 679 by clarifying and simplifying text, especially regarding permit-related issues. NMFS estimates that 771 small catcher vessels, 11 small catcher/processors, 80 small shoreside processors, five SFPs, and six small CDQ groups are directly regulated by this action.

Six CDQ groups, representing 65 Western Alaska communities, currently participate in the CDQ Program. Each is organized as a not-for-profit entity, and none is dominant in its field. Consequently, each is a small entity under the RFA. Several CDQ groups own, in whole or in part, and operate vessels participating in the CDQ fisheries. Because CDQ groups must obtain permits for their vessels, the six CDQ groups also will be directly regulated by this rule.

NMFS considered two alternatives for the permit-related revisions: the status quo and action alternatives. The status quo alternative would maintain the inconsistency of regulatory language regarding permit-related issues, for example, by maintaining the term “federally regulated” and by not replacing it with the specific permit that relates to the paragraph. This would maintain the inconsistency in determination of which permit authorizes which activity. Under the action alternative, NMFS “tightens up” the regulations as they relate to permits, for example, regulatory text is made specific as to whether a permit is issued to a person or to a vessel. Under the action scenario, NMFS clarifies ambiguities in the permit-related regulatory text and improves enforcement of the regulations at 50 CFR part 679.

eLandings Landing Report

NMFS revises regulations at 50 CFR part 680 by removing IFQ crab landing report regulations for incorporation into the § 679.5(e) eLandings regulations. The eLandings landing report originally was created for CR crab, but will be used for reporting groundfish, IFQ halibut, CDQ halibut, and IFQ sablefish as well.

NMFS considered two alternatives for the eLandings regulatory revisions: the status quo and action alternatives. Under the status quo scenario, the regulations for use of eLandings for the CR fisheries would remain at § 680.5

and the regulations for use of eLandings for other fisheries would be in § 679.5(e). This would duplicate two sets of regulations and introduce confusion.

Under the action alternative, NMFS removes regulatory text from § 680.5(b), (c), and (d) that describe the use of eLandings for CR crab and integrates that text into regulations at § 679.5(e). This change allows all related information for the eLandings landing report to be found in one section for groundfish, CR crab, IFQ halibut, IFQ sablefish, and CDQ halibut.

CR Registered Crab Receiver Ex-vessel Volume and Value Report

NMFS is adding a new form, the CR Registered Crab Receiver (RCR) Ex-vessel Volume and Value Report, to be submitted by participants near the end of the crab fishing year. This report is similar to a report required by regulations implementing the NMFS Alaska Region IFQ Program for Pacific halibut and sablefish. The regulations for the form will be described at § 680.5(m). The small entities directly regulated by this action are approximately 30 RCRs required to submit an annual CR RCR Ex-vessel Volume and Value Report.

NMFS considered two alternatives for the addition of this form: the status quo and action alternatives. Under the status quo scenario, the requirement to report through eLandings the price paid for crab during landing would remain mandatory. This would mean that the crab price would be inaccurate, because the price at the time of landing does not include post-delivery or end-of-season adjustments. An inaccurate report of crab value would then be used to assess fees for participants in the CR crab fisheries, required by the Magnuson-Stevens Fishery Conservation and Management Act (Section 304(d)(2)(B)). Inaccurate fees could result in insufficient funds to manage the CR Program.

The action alternative adds the new form to collect crab price information from CR RCRs. The form collects information used to assess fees on an annual basis, which is a statutory requirement. NMFS considered but rejected alternatives (options) of more frequent or less frequent collection of the price information. NMFS Restricted Access Management Program (RAM) will collect the price information to establish a "standard" ex-vessel price for CR crab. The standard price will be used to estimate the cost recovery fees due from processors and harvesters; the participants may not participate in the CR fisheries if fees are not paid. The

cost recovery fees will be used to support management of the CR Program. An additional effect will be the removal of a requirement for an RCR who receives a landing of CR crab harvested under the IFQ, the CDQ, or Adak community allocation programs to submit for each landing the price per pound. Instead, each RCR will be required to submit a CR RCR Ex-vessel Volume and Value Report near the end of the crab fishing year. In addition, the requirement to report through eLandings the price paid for crab when landed will become optional.

Groundfish Observer Provision Regarding At-sea Vessel-to-vessel Transfers

The Fisheries Monitoring and Analysis Division (FMA) monitors groundfish fishing activities in the EEZ off Alaska and conducts research associated with sampling commercial fishery catches, estimation of catch and bycatch mortality, and analysis of fishery-dependent data. As part of the FMA's North Pacific Observer Program, approximately 400 fishery observers spend up to 90 consecutive days each year at sea or at processing plants collecting data for management of the Alaskan groundfish fisheries. On occasion crab fisherman must transfer an observer at sea from one vessel to another.

The small entities directly regulated by this action include no motherships, 11 catcher/processors, and 771 catcher vessels.

NMFS considered three alternatives for the observer at-sea transfer revisions: the status quo and two action alternatives. Under the status quo alternative, the regulatory text would not be changed. The no-action alternative was rejected because it did not meet the action objective of creating a safe transfer environment for a groundfish observer.

Under the preferred action alternative, NMFS revises a groundfish observer provision regarding at-sea vessel-to-vessel transfers by removing "via small boat or raft" from the regulations at § 679.50(g)(1)(ix)(A). This revision will improve safety for observers undergoing a transfer at sea because the regulatory text now states that all at-sea transfers of an observer be conducted during daylight hours, under safe conditions, and with the agreement of the observers involved.

Under the second action alternative, NMFS will prohibit the transfer of an observer at sea. Most of the at-sea transfers are done by companies that own two or more vessels with less than 100 percent observer coverage and use

one observer to meet observer coverage requirements on these vessels. This revision would require an observer to be transferred only at the dock, resulting in increased costs for the company, because vessels would have to return to the dock to pick up or drop off an observer. This alternative was rejected for further analysis because the improvement in observer safety appeared to come at a disproportionate cost to fishing operations.

Miscellaneous Revisions to Fishing Regulations at 50 CFR parts 679 and 680

NMFS amends regulations in Parts 679 and 680 to improve clarity and efficiency. The small entities directly regulated by this final rule include 80 shoreside processors, 5 SFPs, 11 catcher/processors, no motherships, and 771 catcher vessels.

NMFS considered two alternatives for the miscellaneous regulatory revisions: the status quo and action alternatives. Under the status quo alternative the regulatory text would not be changed. Under the action alternative, NMFS amends regulations in Part 679 and Part 680, by adding and revising definitions, revising text to clarify a Sitka Pinnacles Marine Reserve closure provision, adding or correcting cross references, removing obsolete text, adding new text, codifying certain existing practices, and revising figures and tables to Part 679. These changes will facilitate management of the fisheries and enforcement efforts and promote compliance with the regulations.

The preferred action alternative will have no known adverse impacts on small entities. The status quo alternative was rejected because it did not meet the action objective of creating a better regulatory environment.

The regulations in this final rule appear to impose no adverse economic impacts on directly regulated small entities. Therefore no steps were needed to minimize the effects of this regulatory action on small entities.

In the various items considered in this analysis, the preferred alternative was chosen rather than selecting the status quo alternative. The preferred alternative in every case supported the primary objective of this action which is to improve the methods and procedures of recordkeeping and reporting for the fishery programs of NMFS Alaska Region through expansion of electronic reporting methods and by simplifying regulations.

Use of electronic recordkeeping will allow the public to more easily record daily information and retrieve daily information and will increase the

accuracy of information collected and summarized. In addition, this initiation of electronic recordkeeping is the first step to interface with onboard electronics to collect certain information directly (for example location and direction information from a global positioning system). Electronic recordkeeping also creates a wide range of potential reports to allow the operator to analyze his or her fishing activity.

eLandings or other NMFS-approved software allows processors and others to provide commercial harvest and production information of groundfish, halibut, and crab to NMFS, IPHC, and ADF&G. Using eLandings removes reporting duplications, and once implementation is complete, eLandings makes recordkeeping and reporting simpler. Additional benefits of the eLandings system include:

- Immediate verification of permits and vessel identification;
- Timely catch reports for management agency use;
- Options for processors to import or export catch and production information; and
- Significant reduction in data entry by management agencies and processors.

Small Entity Compliance Guide

The preamble to this final rule and particularly the summary of the FRFA serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in this final rule. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the NMFS website at <http://alaskafisheries.noaa.gov>.

Paperwork Reduction Act Collections of Information

This final rule contains collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which have been approved by OMB. The collections are listed below by OMB control number.

OMB Control Number 0648-0206

Public reporting burden is estimated to average per response: 21 minutes for Federal fisheries permit and 21 minutes for Federal processor permit.

OMB Control Number 0648-0213

Public reporting burden is estimated to average per response: 28 minutes for catcher vessel longline and pot gear DFL or ELB; 18 minutes for catcher vessel trawl DFL or ELB; 31 minutes for mothership DCPL or ELB; 41 minutes

for catcher/processor longline and pot gear DCPL or ELB; 30 minutes for catcher/processor trawl gear DCPL or ELB; 23 minutes for buying station report; 7 minutes for check-in/check-out report, mothership or catcher/processor; 8 minutes for check-in/check-out report, shoreside processor. The weekly production report, estimated at 17 minutes; shoreside processor DCPL, estimated at 31 minutes; and mothership consolidated ADF&G fish tickets, estimated at 35 minutes, are removed with this final rule.

OMB Control Number 0648-0272

Public reporting burden for IFQ landing reports is estimated to average 18 minutes per response.

OMB Control Number 0648-0334

Public reporting burden is estimated to average per response: one hour for groundfish and crab LLP transfer application and one hour for scallop LLP transfer application.

OMB Control Number 0648-0515

Public reporting burden is estimated to average per response: 15 minutes for IERS application processor registration; 35 minutes for eLandings landing report; 35 minutes for manual landing report; and 15 minutes for catcher/processor or mothership eLandings production report.

OMB Control Number 0648-0570

Public reporting burden is estimated to average per response: 20 minutes for crab catcher/processor offload report, 40 hours for eligible crab community organization annual report; and 1 hour for CR Registered Crab Receiver Ex-vessel Volume and Value Report.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 15 CFR part 902

Reporting and recordkeeping requirements.

List of Subjects in 50 CFR parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 2, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 15 CFR chapter IX and 50 CFR chapter VI as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

A. Remove entries for “679.5(b), (c), (d), (g), (h), (i), (j), (k) and (m)”;

“679.5(e), (f), and (o)”;

“679.5(l)(1), (l)(2), (l)(3), and (l)(5)”;

“679.5(l)(3)(i), (l)(4)”;

“679.24(e)”;

“679.28(b) and (d)”;

“679.28(f)”;

“679.32(c)”;

“679.61(c) and (f)”;

“679.61(d) and (e)”;

“679.62(b)(3) and (c)”;

“679.63(a)(2)”;

“680.5”;

“680.23(e), (f), (g), and (h)”;

“680.44(a), (b), (c), (d), (e)”;

and “680.44(f)”.

B. Add entries in alphanumeric order for “679.5(b), (h), and (k)”;

“679.5(c)”;

“679.5(d)”;

“679.5(e) and (f)”;

“679.5(g)”;

“679.5(l)(1) through (l)(5)”;

“679.5(o)”;

“679.27(j)(5)”;

“679.28(a)”;

“679.28(b), (c), (d), and (e)”;

“679.28(h)”;

“679.32(c) and (e)”;

“679.61(c), (d), (e), and (f)”;

“679.62”;

“679.63”;

“680.5(a) and (h) through (l)”;

“680.5(b)”;

“680.5(e) and (f)”;

“680.5(g)”;

“680.5(m)”;

“680.23(e), (f), and (g)”;

and “680.44”.

C. Revise entries for “679.5(r)”;

“679.5(s)”;

“679.32(d)”;

“679.32(f)”;

and “679.43”.

The additions and revisions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)

50 CFR	

679.5(b), (h), and (k)	-0213
679.5(c)	-0213, -0272, -0330, -0513, and -0515
679.5(d)	-0213, -0272, and -0513
679.5(e) and (f)	-0213, -0272, -0330, -0401, -0513, and -0515
679.5(g)	-0213, -0272, and -0330
679.5(l)(1) through (l)(5)	-0272

679.5(o)	-0401

679.5(r)	-0213, -0445, and -0545
679.5(s)	-0213, -0445, and -0565

679.27(j)(5)	-0213, -0330, and -0565
679.28(a)	-0213 and -0330
679.28(b), (c), (d), and (e)	-0330

679.28(h)	-0213 and -0515

679.32(c) and (e)	-0213 and -0269
679.32(d)	-0213, -0269 and -0330
679.32(f)	-0213, -0269, and -0272

679.43	-0272, -0318, -0334, -0398, -0401, -0545, -0565, and -0569

679.61(c), (d), (e), and (f)	-0401

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
679.62	-0393
679.63	-0213 and -0330

680.5(a) and (h) through (l)	-0213
680.5(b)	-0515
680.5(e) and (f)	-0570
680.5(g)	-0514

680.5(m)	-0514

680.23(e), (f), and (g)	-0330

680.44	-0514

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 4. In § 679.2:

A. Add in alphabetical order definitions for “At–sea operation”, “eLandings”, “Interagency electronic reporting system (IERS)”, “Maximum retainable amount (MRA)”, “Non–IFQ groundfish”, “Non–individual entity”, “Permit”, “Shoreside processor electronic logbook report (SPELR)”, “Single geographic location”, “User”, “User identification (UserID)”, and “Week–ending date”.

B. Revise the definitions of “Active/inactive periods”, “Associated processor”, “Gear deployment (or to set gear)”, “Gear retrieval (or to haul gear)”, “Haul”, “Prohibited species catch (PSC)”, and “Tender vessel”.

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Active/inactive periods means for longline or pot gear catcher vessel, see § 679.5(c)(3)(iv)(A)(1); for longline or pot gear catcher/processor, see § 679.5(c)(3)(iv)(B)(1); for trawl gear catcher vessel, see § 679.5(c)(4)(iv)(A)(1); for trawl gear catcher/processor, see § 679.5(c)(4)(iv)(B)(1); for shoreside processor or SFP, see § 679.5(c)(5)(ii); for mothership, see § 679.5(c)(6)(iv).

* * * * *

Associated processor means:

(1) *Relationship with a buying station.*

A mothership or catcher/processor issued an FFP, or a shoreside processor or SFP issued an FFP, with a contractual relationship with a buying station to conduct groundfish buying station activities for that processor.

(2) *Relationship with a custom processor.* A mothership or catcher/processor issued an FFP or a shoreside processor or SFP issued an FFP, with a contractual relationship with a custom processor to process groundfish on its behalf.

At–sea operation means, for purposes of eLandings, a catcher/processor or mothership that is receiving and/or processing fish in State waters and/or in waters of the EEZ off the coast of Alaska.

* * * * *

eLandings means the Internet data entry system or desktop client components of the Interagency Electronic Reporting System (IERS) for reporting commercial fishery landings and production from waters off Alaska.

* * * * *

Gear deployment (or to set gear) (see § 679.5(c)(3)(vi)(B) for longline and pot gear; see § 679.5(c)(4)(vi)(B) for trawl gear).

Gear retrieval (or to haul gear) (see § 679.5(c)(3)(vi)(C) for longline and pot gear; see § 679.5(c)(4)(vi)(C) for trawl gear).

* * * * *

Haul means the retrieval of trawl gear which results in catching fish or which does not result in catching fish; a test of trawl gear; or when non–functional gear is pulled in, even if no fish are harvested. All hauls of any type need to be recorded and numbered throughout the year, whether or not fish are caught.

* * * * *

Interagency electronic reporting system (IERS) means an interagency electronic reporting system that allows fishery participants to use the Internet or desktop client software named eLandings to enter landings and production data for appropriate

distribution to the ADF&G, IPHC, and NMFS Alaska Region (see § 679.5(e)).

* * * * *

Maximum retainable amount (MRA) (see § 679.20(e)).

* * * * *

Non-IFQ groundfish means groundfish, other than IFQ sablefish.

Non-individual entity means a person who is not an individual or “natural” person; it includes corporations, partnerships, estates, trusts, joint ventures, joint tenancy, and any other type of “person” other than a natural person.

* * * * *

Permit means documentation granting permission to fish and includes “license” as a type of permit.

* * * * *

Prohibited species catch (PSC) means any of the species listed in Table 2b to this part.

* * * * *

Shoreside processor electronic logbook report (SPELR) (discontinued, see definition of “eLandings” under this section).

* * * * *

Single geographic location (see § 679.4(l)(5)(iii)).

* * * * *

Tender vessel (see also the definition of “buying station” under this section) means a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor.

* * * * *

User means, for purposes of IERS and eLandings, an individual representative of a Registered Buyer; a Registered Crab Receiver; a mothership or catcher/processor that is required to have a Federal Fisheries Permit (FFP) under § 679.4; a shoreside processor or SFP and mothership that receives groundfish from vessels issued an FFP under § 679.4; any shoreside processor or SFP that is required to have a Federal processor permit under § 679.4; and his or her designee(s).

User identification (UserID), for purposes of IERS and eLandings, means the string of letters and/or numbers that identifies the individual and gives him or her authorization to view and submit reports for specific operations or to otherwise use eLandings. To facilitate the management of Users and privileges

and to provide for data security, a separate UserID is issued to each individual.

* * * * *

Week-ending date means the last day of the weekly reporting period which ends on Saturday at 2400 hours, A.l.t., except during the last week of each calendar year, when it ends at 2400 hours, A.l.t., December 31.

* * * * *

■ 5. In § 679.4:

A. Paragraph (a)(4) is removed and reserved.

B. Paragraphs (a)(1)(i)(A), (a)(1)(iv)(A), (a)(1)(iv)(B), (a)(3)(i), (a)(3)(iii), (b) heading, (b)(3), (b)(4), (b)(5) heading, (b)(5)(iv), (e)(2), (e)(3), (f) heading, (f)(2), (f)(3), (f)(4), (g)(1), (k) heading, and (l)(1)(iv) are revised.

C. Paragraphs (a)(1)(vii)(C), (a)(1)(xiv), (a)(9), (b)(5)(vi)(C), (d)(1)(iii), (d)(2)(iv), (d)(3)(v), (k)(6)(x), (l)(1)(ii)(C), and (l)(5)(ii) are added.

The revisions and additions read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of . . .	For more information, see . . .
(i) * * *		
(A) Registered buyer	Until expiration date shown on permit	Paragraph (d)(3)(ii) of this section
* * * * *		
(iv) * * *		
(A) Federal fisheries	Until expiration date shown on permit	Paragraph (b) of this section
(B) Federal processor	Until expiration date shown on permit	Paragraph (f) of this section
* * * * *		
(vii) * * *		
(C) Scallop license	Indefinite	Paragraph (g) of this section
* * * * *		
(xiv) Crab Rationalization Program permits	see § 680.4 of this chapter	§ 680.4 of this chapter
(A) Crab Quota Share permit	Indefinite	§ 680.4(b) of this chapter
(B) Crab Processor Quota Share permit	Indefinite	§ 680.4(c) of this chapter
(C) Crab Individual Fishing Quota (IFQ) permit	Specified fishing year	§ 680.4(d) of this chapter
(D) Crab Individual Processor Quota (IPQ) permit	Specified fishing year	§ 680.4(e) of this chapter
(E) Crab IFQ hired master permit	Specified fishing year	§ 680.4(g) of this chapter
(F) Registered Crab receiver permit	Specified fishing year	§ 680.4(i) of this chapter
(G) Federal crab vessel permit	Specified fishing year	§ 680.4(k) of this chapter

If program permit or card type is:	Permit is in effect from issue date through the end of . . .	For more information, see . . .
(H) Crab harvesting cooperative IFQ permit	Specified fishing year	§ 680.21(b) of this chapter

* * * * *

(3) * * *

(i) A person may obtain an application for a new permit or for renewal or revision of an existing permit for any of the permits under this section and must submit forms to NMFS as instructed in application instructions. With appropriate software, all permit applications may be completed online and printed from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

* * * * *

(iii) The operator, manager, Registered Buyer, or Registered Crab Receiver must obtain a separate permit for each applicant, facility, or vessel, as appropriate to each Federal permit in this section (§ 679.4) and retain a copy of each permit application, whether the application is requesting an initial permit or renewing or revising an existing permit.

* * * * *

(9) *Permit surrender.* The Regional Administrator will recognize the voluntary surrender of a permit issued in this section, § 679.4, if a permit may be surrendered and it is submitted by the person named on the permit, owner of record, or agent. Submit the original permit to Program Administrator, RAM Program, P.O. Box 21668, Juneau, AK 99802, by certified mail or other method that provides written evidence that NMFS Alaska Region received it. The receiving date of signature by NMFS staff is the date the permit was surrendered.

(b) *Federal fisheries permit (FFP)*

* * * * *

(3) *Vessel operations categories.* An FFP authorizes a vessel owner to deploy a vessel to conduct operations in the GOA or BSAI under the following categories: Catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than as specified on the FFP, except that a catcher vessel, catcher/processor, mothership, or tender vessel may be operated as a support vessel.

(4) *Duration—(i) Length of permit effectiveness.* An FFP is in effect from the effective date through the expiration date, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or

modified under § 600.735 or § 600.740 of this chapter.

(ii) *Surrendered permit.* An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An FFP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(iii) *Amended permit.* An owner or operator, who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS website at <http://alaskafisheries.noaa.gov> as instructed on the application form. Upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(5) *Contents of an FFP application.*

* * * * *

(iv) *Area and gear information.* Indicate the type of vessel operation. If catcher/processor or catcher vessel, indicate only the gear types used for groundfish fishing. If the vessel is a catcher/processor under 125 ft (18.3 m) LOA that is intended to process GOA inshore pollock or GOA inshore Pacific cod, mark the box for a GOA inshore processing endorsement.

* * * * *

(vi) * * *

(C) Selections for species endorsements will remain valid until an FFP is amended to remove those endorsements or the permit with these endorsements is surrendered or revoked.

* * * * *

(d) * * *

(1) * * *

(iii) An IFQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An annual IFQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual IFQ permit may be issued to the quota share holder of record in a subsequent fishing year. Contact NMFS/RAM for more information locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(2) * * *

(iv) An IFQ hired master permit may be voluntarily surrendered in

accordance with paragraph (a)(9) of this section. An IFQ hired master permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(3) * * *

(v) A Registered Buyer permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A Registered Buyer permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

(e) * * *

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, surrendered, or modified. A halibut CDQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. The halibut CDQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual halibut CDQ permit may be issued in a subsequent fishing year to the CDQ group entitled to a CDQ halibut allocation. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(3) An individual must have onboard the vessel a legible copy of his or her halibut CDQ hired master permit issued by the Regional Administrator while harvesting and landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ. A halibut CDQ hired master permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A halibut CDQ hired master permit may be reissued to the permit holder of record in the same fishing year

in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

(f) *Federal processor permit (FPP)*

* * * * *

(2) *Contents of an FPP application.* To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (v) of this section for each SFP and shoreside processor plant to be permitted):

(i) *New or amended permit.* Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor or an SFP.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business fax number, and business email address of all owners, and if applicable, the name of any person or company (other than the owner) who manages the operations of the shoreside processor or SFP.

(iii) *SFP information.* Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and GOA inshore Pacific cod.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; permanent business mailing address; physical location of plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility (YES or NO, and if YES, name of previous processor); whether multiple processing businesses are using this plant; whether the owner named in paragraph (f)(2)(ii) of this section owns this plant; ADF&G processor code; business telephone number; business fax number; and business e-mail address.

(v) *Signature.* The owner or agent of the owner of the shoreside processor or SFP must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(3) *Issuance.* Upon receipt of a properly completed permit application,

the Regional Administrator will issue a Federal processor permit required by this paragraph (f).

(4) *Duration—(i) Length of effectiveness.* An FPP is in effect from the effective date through the date of permit expiration, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

(ii) *Surrendered permit.* An FPP may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An FPP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(iii) *Amended permit.* An owner or operator, who applied for and received an FPP, must notify NMFS of any change in the permit information by submitting an FPP application found at the NMFS website at <http://alaskafisheries.noaa.gov>. The owner or operator must submit the application as instructed on the application form. Upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FPP.

* * * * *

(g) * * *

(1) *General requirements.* (i) In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license onboard at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with State of Alaska regulations and only with a vessel that does not exceed the maximum LOA specified on the license and the gear designation specified on the license.

(ii) A scallop LLP license may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered scallop LLP license will cease to exist and will not be subsequently reissued. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

(k) *Licenses for license limitation (LLP) groundfish or crab species*

* * * * *

(6) * * *

(x) *Surrender of groundfish or crab LLP.* A groundfish or crab LLP license

may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered groundfish or crab LLP license will cease to exist and will not be subsequently reissued. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

(l) * * *

(1) * * *

(ii) * * *

(C) *Surrender of AFA permits.* Except for AFA inshore processor permits, AFA permits may not be surrendered.

* * * * *

(iv) *Amended permits.* AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended by NMFS to reflect any change in the ownership of the vessel or processor after submittal of this information to NMFS in a written letter.

* * * * *

(5) * * *

(ii) *Surrender of permit.* An AFA inshore processor permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. The AFA inshore processor permit will not be reissued in the same fishing year in which it was surrendered, but may be reapplied for and if approved, reissued to the permit holder of record in a subsequent fishing year. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

■ 6. In § 679.5:

■ A. Paragraphs (j) and (m) are removed and reserved.

■ B. Paragraphs (a) through (f), (g)(1) introductory text, (h), (i), (l)(1)(iv), and (l)(2) are revised.

The revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) *General R&R requirements.* R&R requirements include, but are not limited to, paper and electronic documentation, logbooks, forms, reports, receipts, computer printouts, and requests for inspection described in this section and in § 679.28.

(1) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks required under this section. All groundfish forms required under this section are available from the Alaska Region website at <http://alaskafisheries.noaa.gov> or may be

requested by calling the Sustainable Fisheries Division at 907-586-7228 or faxing 907-586-7465. The forms may be completed online, printed, and mailed or faxed to NMFS at the address or fax number shown on the form. The forms also may be completed online, saved as a file, and submitted to NMFS as an attachment to an e-mail to the e-mail address shown on the form.

(ii) *Current editions.* The operator must use the current edition of the logbooks and current format of the forms. Upon approval from the Regional Administrator NMFS-approved electronic versions of the forms may be used. Upon written notification and approval by the Regional Administrator, logbooks from the previous year may be used.

(iii) *Management program defined.* A “management program” is a unique fishery program with a specific management strategy and/or allocation. Harvest that occurred under the management programs listed in the following table must be recorded separately in the logbooks, forms, and eLandings.

If harvest made under . . . program	Record the . . .	For more information, see . . .
(A) Western Alaska Community Development Quota (CDQ)	CDQ group number	subpart C of this part
(B) Exempted Fishery	Exempted fishery permit number	§ 679.6
(C) Research Fishery	Research fishery permit number	§ 600.745(a) of this chapter
(D) Aleutian Islands Pollock (AIP)	n/a	subpart F of this part
(E) Open access (OA)	[for recording in eLandings only]	paragraph (e) of this section

(2) *Responsibility.* (i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving groundfish from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor, SFP, or buying station receiving groundfish from a catcher vessel and delivering to a shoreside processor or SFP (hereafter referred to as the manager) are each responsible for complying with the applicable R&R requirements in this section and in § 679.28.

(ii) The owner of a vessel, shoreside processor, SFP, or buying station is responsible for compliance and must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the applicable R&R requirements in this section and in § 679.28.

(iii) The IFQ permit holder, IFQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (e), (g), (k), and (l) of this section.

(iv) The CDQ permit holder, CDQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (e), (g), (k), and (l)(1) through (6) of this section.

(3) *Fish to be recorded and reported.* The operator or manager must record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part) and forage fish (see Table 2c to this part). The operator or manager may record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for

non-groundfish (see Table 2d to this part):

(i) Harvest information;
(ii) Receipt information from catcher vessels and buying stations, including fish received from vessels not required to have an FFP; and fish received under contract for handling or processing for another processor;

(iii) Discard or disposition information, including fish reported but not delivered to the operator or manager, e.g., fish used onboard a vessel, when receiving catch from a catcher vessel or buying station; and
(iv) Transfer information, including fish transferred out of the facility or off the vessel.

(4) *Exemptions*—(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

(ii) *Catcher vessels that take groundfish in crab pot gear for use as crab bait on that vessel.* (A) Owners or operators of catcher vessels who, when crab is open anywhere or in the same area as an open crab season, take groundfish in crab pot gear for use as crab bait onboard their same vessels, and the bait is neither transferred nor sold, are not required to comply with R&R requirements of this section.

(B) This exemption does not apply to fishermen who:

(1) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(2) Participate in a directed fishery for groundfish using any gear type during

periods that are outside an open crab season for use as crab bait onboard their vessel.

(C) No groundfish species listed by NMFS as “prohibited” in a management or regulatory area may be taken in that area for use as bait.

(5) *Inspection and retention of records*—(i) *Inspection of records.* The operator or manager must make available for inspection the R&R documentation in this section and in § 679.28 upon the request of an authorized officer.

(ii) *Retention of records.* The operator or manager must retain the R&R documentation described in this section and in § 679.28:

(A) *On site.* Retain these records on site at the shoreside processor or SFP, or onboard the vessel until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the R&R documentation are retained.

(B) *For 3 years.* Retain these records for 3 years after the end of the fishing year during which the records were made.

(6) *Maintenance of records.* The operator or manager must maintain all records described in this section and in § 679.28 in English and in a legible, timely, and accurate manner, based on Alaska local time (A.l.t.); if handwritten, in indelible ink; if computer-generated, as a legible printed paper copy.

(7) *Custom processing.* The manager of a shoreside processor or SFP or the operator of a mothership must record products that result from custom processing for another person in eLandings consistently throughout a

fishing year using one of the following two methods:

(i) *Combined records.* Record landings, discards or dispositions, and products of custom-processed groundfish routinely in eLandings using processor name, FFP or FPP number, and ADF&G processor code; or

(ii) *Separate records.* Record landings, discards or dispositions, and products of custom-processed groundfish in eLandings identified by the name, FPP number or FFP number, and ADF&G processor code of the associated business entity.

(b) *Representative.* The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor, SFP, or buying station delivering to a shoreside processor or SFP may identify one contact person to complete the logbook and forms and to respond to inquiries from NMFS. Designation of a representative under this paragraph (b) does not relieve the owner, operator, or

manager of responsibility for compliance under paragraphs (a)(1) through (6) of this section.

(c) *Logbooks—(1) Requirements—(i) Use of two or more vessel logbooks of same gear type.* If using more than one logbook of the same gear type in a fishing year onboard a vessel, the operator must ensure that the page numbers follow the consecutive order of the previous logbook.

(ii) *Use of two or more vessel logbooks of different gear types.* If two or more different gear types are used onboard a vessel in a fishing year, the operator(s) of this vessel must use the same number of separate vessel logbooks for the different gear types, each separately paginated.

(iii) *Two vessel logbooks for pair trawl.* If two vessels are dragging a trawl between them (pair trawl), the operator of each vessel must maintain a separate logbook to record the amount of the catch retained and fish discarded by that vessel. Each of the two logbooks must be separately paginated.

(iv) *Two logbooks of different operation.* If a vessel functions both as a mothership and as a catcher/processor in the same fishing year, the operator(s) must maintain two logbooks, a separate logbook for each operation type, each separately paginated.

(v) *Alteration of logbook information.* (A) Except as described in paragraph (c)(1)(v)(B) of this section, no person may alter or change any entry or record in a logbook.

(B) An inaccurate or incorrect entry or record must be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible. All corrections must be made in ink.

(vi) *Logsheets distribution and submittal.* (A) No person except an authorized officer may remove any original white logsheet of any logbook.

(B) The operator must distribute and submit logsheets as indicated in the following table:

Logsheet Distribution and Submittal							
If logsheet color is ...	Logsheet found in these logbooks					Submit to ...	Time limit
	CV lgl	CV trw	CP lgl	CP trw	MS		
(1) White	X	X	X	X	X	Must retain, permanently bound in logbook	
(2) Goldenrod	X	X	X	X	X	Observer	After signature of operator and prior to departure of observer from the vessel.
(3) Yellow	X	X	X	X	X	Must submit quarterly to: NOAA Fisheries Office for Law Enforcement Alaska Region Logbook Program P.O. Box 21767 Juneau, AK 99802 1767 Telephone: 907-586-7225	On the following schedule: <i>1st quarter</i> by May 1 of that fishing year <i>2nd quarter</i> by August 1 of that fishing year <i>3rd quarter</i> by November 1 of that fishing year <i>4th quarter</i> by February 1 of the following fishing year
(4) Blue	X	X				Mothership, shoreside processor, SFP, or buying station that receives the harvest	Within 2 hours after completion of catch delivery
(5) Green	X		X			Optional, but may be required by IPHC (see §§ 300.60 through 300.65 of this chapter)	If required, after the vessel's catch is off-loaded

Note: CP = catcher/processor; CV = catcher vessel; lgl = longline; trw = trawl; MS = mothership.

(2) *Recording active and inactive time periods in the DFL or DCPL—(i) Account for each day of the fishing year.* The operator must account for each day of the fishing year, January 1 through December 31, in the DFL or DCPL and indicate whether the vessel or processor

was active or inactive during the time period.

(A) An active period by fishing category is defined in the following paragraphs under this section:

Paragraph	Fishing Category
(c)(3)(iv)(A)(1)	Catcher vessel, longline or pot gear
(c)(3)(iv)(B)(1)	Catcher/processor, longline or pot gear

Paragraph	Fishing Category
(c)(4)(iv)(A)(1)	Catcher vessel, trawl gear
(c)(4)(iv)(B)(1)	Catcher/processor, trawl gear
(c)(5)(ii)	Shoreside processor or SFP
(c)(6)(iv)	Mothership

(B) An inactive period is defined as a time period other than active.

(ii) *Record January 1 on page 1.* The operator must record the first day of the fishing year, January 1, on page one of the DFL or DCPL regardless of whether the vessel or processor was active or inactive. The operator must record time periods consecutively.

(iii) *Required information for inactive periods.* If inactive, the operator must record the following information (see paragraphs (c)(2)(iii)(A) through (F) of this section) on one logsheet in the DFL or DCPL:

(A) If a catcher vessel, vessel name, ADF&G vessel registration number, FFP number or Federal crab vessel permit number, operator printed name, operator signature, and page number.

(B) If a mothership or catcher/processor, record vessel name, ADF&G processor code, FFP number, operator printed name, operator signature, and page number.

(C) Mark "inactive."

(D) Record the date (mm/dd) of the first day when inactive under "Start date."

(E) Write brief explanation why inactive, e.g., bad weather or equipment

failure. If inactive due to surrender of a FFP or FPP, write "surrender of permit" as the reason for inactivity.

(F) Record the date (mm/dd) of the last day when inactive under "End date."

(iv) *Inactive two or more quarters.* If the inactive time period extends across two or more successive quarters, the operator must complete a logsheet for each inactive quarter. The first logsheet must indicate the first and last day of the first inactive quarter. Successive logsheets must indicate the first and last day of its respective inactive quarter.

(3) *Longline and pot gear catcher vessel DFL and catcher/processor DCPL—(i) Responsibility—(A) Groundfish fisheries.* (1) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA, that is required to have an FFP under § 679.4(b) and that is using longline or pot gear to harvest groundfish must maintain a longline and pot gear DFL.

(2) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor that is required to have an FFP under § 679.4(b) and that is using longline or pot gear to harvest groundfish must use a combination of catcher/processor longline and pot gear DCPL and eLandings to record and report daily processor identification information, catch-by-set information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (1) Except as described in paragraph (f)(1)(i) of this

section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA, using fixed gear (NMFS), setline (IPHC), or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI, must maintain a longline and pot gear DFL.

(2) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor that is using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA or BSAI must use a combination of catcher/processor longline and pot gear DCPL and eLandings to record and report daily processor identification information, catch-by-set halibut and sablefish landings data, and halibut, sablefish, and prohibited species discard or disposition data.

(C) *CR crab fisheries.* (1) The operator of a catcher vessel 60 ft (18.3 m) or greater LOA, using pot gear to harvest CR crab from the BSAI must maintain a longline and pot gear DFL.

(2) The operator of a catcher/processor that is using pot gear to harvest CR crab from the BSAI must use a combination of catcher/processor longline and pot gear DCPL and eLandings to record and report daily processor identification information, CR crab landings data, and CR crab and prohibited species discard or disposition data.

(ii) *Data entry time limits—(A) Catcher vessel.* The operator of a catcher vessel using longline or pot gear must record in the DFL the information from the following table for each set within the specified time limit:

DATA ENTRY TIME LIMITS, CATCHER VESSEL LONGLINE OR POT GEAR	
Required information	Time limit for recording
(1) Set number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number, halibut CDQ permit number, halibut IFQ permit number, sablefish IFQ permit number, crab IFQ permit number, FFP number and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul weight for each set	Within 2 hours after completion of gear retrieval
(2) Discard and disposition information	By noon each day to record the previous day's discard and disposition information
(3) Submit the blue DFL to mothership, shoreside processor, SFP, or buying station receiving catch	Within 2 hours after completion of catch delivery
(4) All other required information	Within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits
(5) Operator sign the completed logsheets	Within 2 hours after completion of catch delivery
(6) Submit goldenrod logsheet to the observer	After signature of operator and prior to departure of observer from the vessel.

(B) *Catcher/processor*. The operator of a catcher/processor using longline or pot gear must record in the DCPL or eLandings the information from the following table for each set within the specified time limit:

DATA ENTRY TIME LIMITS, CATCHER/PROCESSOR LONGLINE OR POT GEAR			
Required information	Record in		Time limit for recording
	DCPL	eLandings	
(1) Set number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number, halibut CDQ permit number, halibut IFQ permit number, sablefish IFQ permit number, crab IFQ permit number, FFP number and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul weight for each set	X	X	Within 2 hours after completion of gear retrieval
(2) Discard and disposition information		X	By midnight each day to record the previous day's discard and disposition information
(3) Product information		X	By noon each day to record the previous day's production information
(4) All other required information	X	X	By noon of the day following completion of production
(5) Operator sign the completed logsheets	X	X	By noon of the day following the week-ending date of the weekly reporting period
(6) Submit goldenrod logsheet to the observer	X		After signature of operator and prior to departure of observer from the vessel

(iii) *Required information, if inactive*. See paragraph (c)(2) of this section.

(iv) *Required information, if active—(A) Catcher vessel, longline or pot gear*. (1) A catcher vessel using longline or pot gear is active when gear remains on the grounds in a reporting area (except reporting areas 300, 400, 550, or 690), regardless of the vessel location.

(2) If the catcher vessel identified in paragraph (c)(3)(i)(A)(1) of this section is active, the operator must record in the DFL, for one or more days on each logsheet, the information listed in paragraphs (c)(3)(v), (vi), (viii), (ix), and (x) of this section.

(3) *Retain and record discard quantities over the MRA*. When a catcher vessel is fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount (MRA) for Pacific cod or rockfish as defined in Table 10 or 11 to this part. Quantities over this amount must be discarded and recorded as discard in the logbook.

(B) *Catcher/processor, longline or pot gear*. (1) A catcher/processor using longline or pot gear is active when processing or when all or part of the longline or pot gear is in the water.

(2) If the catcher/processor identified in paragraph (c)(3)(i)(A)(2) of this section is active, the operator must record in the DCPL the information

listed in paragraphs (c)(3)(v) and (vi) of this section and must record in eLandings the information listed in paragraphs (c)(3)(v), (vii), (viii), and (x) of this section.

(3) *Retain and record discard quantities over the MRA*. When a catcher/processor is fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the MRA for Pacific cod or rockfish as defined in Table 10 or 11 to this part. Quantities over this amount must be discarded and recorded as discard in eLandings.

(v) *Identification information—(A) Page number*. Number the pages in each logbook consecutively, beginning on the first page of the DFL or DCPL with page 1 for January 1 and continuing for the remainder of the fishing year.

(B) *Printed name and signature of operator*. The operator's name must be printed in the DFL or DCPL. The operator must sign each completed logsheet of the DFL or DCPL as verification of acceptance of the responsibility required in paragraph (a)(2) of this section.

(C) *Vessel identification*. Name of vessel as displayed in official documentation; FFP number or Federal crab vessel permit number of the vessel; and ADF&G vessel registration number if a catcher vessel or ADF&G processor code if a catcher/processor.

(D) *Other permit numbers (if applicable)*. IFQ permit number of the operator, if any, and each permit number of any IFQ permit on which anyone aboard is authorized to fish; groundfish CDQ group number; and halibut CDQ permit number.

(E) *Reporting area—(1) Groundfish*. Record the Federal reporting area code (see Figures 1 and 3 to this part) where gear retrieval was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(2) *IFQ halibut and CDQ halibut*. Record the IPHC regulatory area (see Figure 15 to this part) where gear retrieval was completed, regardless of where the majority of the set took place.

(3) *CR crab*. Leave this field blank.

(F) *Crew size*. If a catcher vessel, record the number of crew members (including operator), excluding certified observer(s), on the last day of a trip. If a catcher/processor, record the number of crew members (including operator), excluding certified observer(s), on the last day of the weekly reporting period.

(G) *Gear type*. Use a separate logsheet for each gear type. From the following table, indicate the gear type used to harvest the fish and appropriate "gear ID." In addition, if using hook-and-line gear, enter the alphabetical letter that coincides with the gear description. If gear information is the same on subsequent logsheets, mark the box instead of re-entering the gear type information on the next logsheet.

If gear type is ...	Then ...
(1) Other gear	If gear is other than those listed within this table, indicate "Other" and describe
(2) Pot gear	Enter the number of pots lost (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)) and number of pots set
(3) Hook-and-line gear	Indicate: (i) Whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter))
	(ii) Length of skate to the nearest foot (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)), number of skates lost (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)), and number of skates set
	(iii) Number of hooks per skate (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)), size of hooks, and hook spacing in feet
	(iv) Seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part)

(H) *Management program.* Indicate whether harvest occurred under a management program (see paragraph (a)(1)(iii) of this section). Use a separate logsheet for each management program. If harvest is not under one of the listed management programs, leave blank.

(I) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(vi) *Catch-by-set information.* The operator must record the following information (see paragraphs (c)(3)(vi)(A) through (L) of this section) for each set (see § 679.2) in the DFL or DCPL. If no catch occurred for a given day, write "no catch."

(A) *Set number.* Sequentially by year.

(B) *Gear deployment (or to set gear)—*
(1) *Hook-and-line gear begin position.* Record date (mm/dd), time (in military format, A.l.t.), and the begin position (in latitude and longitude to the nearest minute; indicate E or W for longitude) when the first hook-and-line gear of a set enters the water.

(2) *Jig or troll gear begin position.* Record date (mm/dd), time (in military

format, A.l.t.), and the begin position (latitude and longitude to the nearest minute; indicate E or W for longitude) when the jig or troll gear enters the water.

(3) *Pot gear begin position.* Record date (mm/dd), time (in military format, A.l.t.), and the begin position (latitude and longitude to the nearest minute; indicate E or W for longitude) when the pot gear enters the water.

(C) *Gear retrieval (or to haul gear)—*
(1) *Hook-and-line gear end position.* Date (mm/dd), time (in military format, A.l.t.), and end position coordinates (in latitude and longitude to the nearest minute; indicate E or W for longitude), where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.

(2) *Jig or troll gear end position.* Date (mm/dd), time (in military format, A.l.t.), and end position coordinates (in latitude and longitude to the nearest minute; indicate E or W for longitude) where the jig or troll gear leaves the water.

(3) *Pot gear end position.* Date (mm/dd), time (in military format, A.l.t.), and end position coordinates (in latitude and longitude to the nearest minute; indicate E or W for longitude) where the last pot of a set is retrieved, regardless of where the majority of the set took place.

(D) *Begin and end buoy or bag numbers.* (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)).

(E) *Begin and end gear depths.* Recorded to the nearest fathom (optional, but may be required by IPHC regulations (see §§ 300.60 through 300.65 of this chapter)).

(F) *Species codes.* The operator must record and report required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), and forage fish (see Table 2c to this part). The operator may record and report information for non-groundfish (see Table 2d to this part).

(G) *Target species code.* Enter the species code of the intended species to be harvested. Enter only one target species code.

(H) *Estimated total hail weight.* Enter the estimated hail weight, which is an estimate of the total weight of the entire catch without regard to species. Indicate whether weight is estimated to the nearest pound or to the nearest 0.001 mt.

(I) *IR/IU species (see § 679.27).* If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species, if applicable; indicate whether weight is estimated to the nearest pound or the

nearest 0.001 mt. Use one line to record information for each IR/IU species, including species code and amount of catch. If more than one IR/IU species are to be recorded, the operator must use a separate line for each species.

(J) *IFQ halibut and CDQ halibut.* Estimated total net weight of IFQ halibut and CDQ halibut to the nearest pound.

(K) *IFQ sablefish.* Number and estimated total round weight of IFQ sablefish to the nearest pound. Indicate whether IFQ sablefish product is Western cut, Eastern cut, or round weight.

(L) *CR crab.* If in a CR crab fishery, record the number and scale weight of a raw CR crab to the nearest pound.

(vii) *Product information, catcher/processor.* The operator of a catcher/processor using longline or pot gear must record groundfish product information for all retained groundfish in eLandings (see paragraph (e)(10) of this section).

(viii) *Discard or disposition information, catcher vessel.* The operator must record in a DFL the discard or disposition information that occurred prior to and during delivery to a buying station, mothership, shoreside processor, or SFP. Discard or disposition information must include the daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals. If no discard or disposition occurred for a given day, the operator must write "no discards or disposition."

(A) Enter discard or disposition information by species codes and product codes as follows:

(1) Date (mm/dd) of discard or disposition (day that discard or disposition occurred).

(2) For whole fish discard or disposition of groundfish or Pacific herring PSC, daily estimated total weight, balance forward weight from the previous day, and cumulative total weight since last delivery for each species; indicate whether weight is estimated to the nearest pound or nearest 0.001 mt.

(3) For whole fish discard or disposition of each prohibited species (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs) record the daily estimated total number, balance forward from the previous day, and cumulative total number since the last delivery.

(4) Summarize the weekly cumulative discard and disposition totals of groundfish weights and number of PSC animals separately by reporting area, management program, and gear type. Determine the weekly cumulative total

by adding daily totals and the balance carried forward from the day before.

(B) The operator must record "0" or zero balance forward and start a new logsheet after the offload or transfer of all fish or fish product onboard and prior to the beginning of each fishing trip. Nothing shall be carried forward from the previous fishing trip.

(ix) *Discard or disposition information, catcher/processor.* The operator of a catcher/processor using longline or pot gear must record all discard or disposition information in eLandings (see paragraph (e)(10) of this section).

(x) *Catcher vessel delivery information.* The operator of a catcher vessel must enter the following information (see paragraphs (c)(3)(x)(A) through (D) of this section) for delivery

to a buying station, mothership, shoreside processor, or SFP:

(A) Date (mm/dd) that delivery of harvest was completed.

(B) ADF&G fish ticket issued to operator by the recipient, Registered Buyer, or RCR receiving the delivery.

(C) Name of recipient, Registered Buyer, or RCR.

(D) For the unloading port, enter the name of the port or port code (see Tables 14a and 14b to this part) of delivery location.

(4) *Trawl gear catcher vessel DFL and catcher/processor DCPL—(i) Responsibility.* (A) Except as described in paragraph (f)(1)(iii) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA, that is required to have an FFP under § 679.4(b), and that is using trawl gear to harvest groundfish must maintain a trawl gear DFL, must complete one or more

logsheets per day. Upon notification by the Regional Administrator, a DFL from the previous year may be used.

(B) Except as described in paragraph (f)(1)(iv) of this section, the operator of a catcher/processor that is required to have an FFP under § 679.4(b) and that is using trawl gear to harvest groundfish is required to use a combination of catcher/processor trawl gear DCPL and eLandings to record and report daily processor identification information, catch-by-haul landings information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(ii) *Data entry time limits—(A) Catcher vessel.* The operator of a catcher vessel using trawl gear must record in the DFL the information in the following table for each haul within the specified time limit:

DATA ENTRY TIME LIMITS, CATCHER VESSEL TRAWL GEAR	
Required information	Time limit for recording
(1) Haul number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number (if applicable), and total estimated haul weight for each haul	Within 2 hours after completion of gear retrieval
(2) Discard and disposition information	By noon each day to record the previous day's discard and disposition information
(3) Submit blue DFL to mothership, shoreside processor, SFP, or buying station receiving the catch	Within 2 hours after completion of catch delivery
(4) Record all other required information	Within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits
(5) Operator sign the completed logsheets	Within 2 hours after completion of catch delivery
(6) Submit the goldenrod logsheet to the observer	After signature of operator and prior to departure of observer from the vessel.

(B) *Catcher/processor.* The operator of a catcher/processor using trawl gear must record in the DCPL or eLandings the information in the following table for each haul within the specified time limit:

DATA ENTRY TIME LIMITS, CATCHER/PROCESSOR TRAWL GEAR			
Required information	Record In		Time limit for recording
	DCPL	eLandings	
(1) Haul number, time and date gear set, time and date gear hauled, begin and end positions of gear, CDQ group number (if applicable), and total estimated haul weight for each haul, or if required to use a NMFS approved scale, the scale weight for each haul	X	X	Except for Rockfish Pilot Program, within 2 hours after completion of gear retrieval. For Rockfish Pilot Program, actual scale weight from the flow scale may be recorded within 24 hours after completion of gear retrieval.
(2) Discard and disposition information		X	By midnight each day to record the previous day's discard and disposition information
(3) Record product information		X	By noon each day to record the previous day's production information
(4) Record all other required information	X	X	By noon of the day following completion of production to record all other required information

DATA ENTRY TIME LIMITS, CATCHER/PROCESSOR TRAWL GEAR			
Required information	Record In		Time limit for recording
	DCPL	eLandings	
(5) Operator sign the completed logsheets	X	X	By noon of the day following the week-ending date of the weekly reporting period
(6) Submit the goldenrod logsheet to the observer	X		After signature of operator and prior to departure of observer from the vessel.

(iii) *Required information, if inactive.* See paragraph (c)(2) of this section.

(iv) *Required information, if active—(A) Catcher vessel.* (1) A catcher vessel using trawl gear is active when all or part of the trawl net is in the water.

(2) If the catcher vessel identified in paragraph (c)(4)(i)(A) of this section is active, the operator must record for one day per logsheet in the DFL, the information described in paragraphs (c)(4)(v), (vi), (viii), and (x) of this section.

(B) *Catcher/processor.* (1) A catcher/processor using trawl gear is active when processing groundfish or when all or part of the trawl net is in the water.

(2) If the catcher/processor identified in paragraph (c)(4)(i)(B) of this section is active, the operator must record for one day per logsheet in the DCPL, the information described in paragraphs (c)(4)(v) and (vi) of this section and record in eLandings the information described in paragraphs (c)(4)(v), (vii), and (ix) of this section.

(v) *Identification information.* If active, the operator must record the following information (see paragraphs (c)(4)(v)(A) through (J) of this section):

(A) *Date.* Enter date of each day (mm/dd/yyyy). This date is also the date of gear deployment.

(B) *Page number.* Number the pages in each logbook consecutively, beginning on the first page of the DFL or DCPL with page 1 for January 1 and continuing for the remainder of the fishing year.

(C) *Printed name and signature of operator.* The operator's name must be printed in the DFL or DCPL. The operator must sign each completed logsheet of the DFL or DCPL as verification of acceptance of the responsibility required in paragraph (a)(2) of this section. The operator's signature is due by noon of the day following the week-ending date of the weekly reporting period.

(D) *Vessel identification.* Name of vessel as displayed in official documentation; FFP number of the vessel; ADF&G vessel registration number if a catcher vessel; and ADF&G processor code if a catcher/processor.

(E) *Federal reporting area.* Record the Federal reporting area code where gear retrieval was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(F) *COBLZ or RKCSA.* If gear retrieval occurred in the COBLZ (see Figure 13 to this part) or RKCSA (see Figure 11 to this part) area within a reporting area, use two separate logsheets, the first to record the information from the reporting area that includes COBLZ or RKCSA, and the second to record the information from the reporting area that does not include COBLZ or RKCSA.

(G) *Crew size.* If a catcher vessel, record the number of crew members (including operator), excluding certified observer(s), on the last day of a trip. If a catcher/processor, record the number of crew members (including operator), excluding certified observer(s), on the last day of the weekly reporting period.

(H) *Gear type.* Use a separate logsheet for each gear type. Indicate whether pelagic trawl or non-pelagic trawl gear was used to harvest the fish.

(I) *Management program.* Indicate whether harvest occurred under one of the management programs (see paragraph (a)(1)(iii) of this section). Use a separate logsheet for each management program. If harvest is not under one of the listed management programs, leave blank.

(J) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(vi) *Catch-by-haul information.* The operator must record the following information (see paragraphs (c)(4)(vi)(A) through (H) of this section) for each haul (see § 679.2). If no catch occurred for a given day, write "no catch."

(A) *Haul number.* Number hauls sequentially by year.

(B) *Gear deployment (or to set gear).* Record the following information (see paragraphs (c)(4)(vi)(B)(1) and (2) of this section) for trawl gear deployment:

(1) The time (in military format, A.l.t.) when the trawl net enters the water, and

(2) The position (latitude and longitude to the nearest minute; indicate

E or W for longitude) where the trawl net enters the water.

(C) *Gear retrieval (or to haul gear).* Record the following information (see paragraphs (c)(4)(vi)(C)(1) and (2) of this section) for trawl gear retrieval:

(1) The date (mm/dd) and time (in military format, A.l.t.) when retrieval of trawl gear cable begins.

(2) The position (in latitude and longitude to the nearest minute; indicate E or W for longitude) where retrieval of trawl gear cable begins.

(D) *Average sea depth and average gear depth.* Average sea depth and average gear depth; indicate whether average is reported to the nearest meter or fathom.

(E) *Species codes.* The operator must record and report the required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), and forage fish (see Table 2c to this part). The operator may also record and report the required information for non-groundfish (see Table 2d to this part).

(F) *Target species code.* Enter the species code of the species to be harvested. Enter only one target species code.

(G) *IR/IU species (see § 679.27).* If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species, if applicable; indicate whether estimated weight is to the nearest pound or the nearest 0.001 mt. Use one line to record information for each IR/IU species, including species code and amount of catch. If more than one IR/IU species are to be recorded, the operator must use a separate line for each species.

(H) *Total estimated haul weight.* (1) If a catcher vessel or catcher/processor using trawl gear and not using NMFS-approved scales, the operator must record the haul weight of each haul; total haul weight is an estimate of the total weight of the entire catch without regard to species. Indicate whether estimated weight is to the nearest pound or to the nearest 0.001 mt.

(2) If a catcher/processor using trawl gear is required to use a NMFS-approved scale, the operator must record the scale weight of each haul

without regard to species. Indicate whether weight is to the nearest pound or to the nearest 0.001 mt.

(vii) *Product information, catcher/processor.* The operator of a catcher/processor using trawl gear must record all product information for all retained groundfish in eLandings (see paragraph (e)(10) of this section).

(viii) *Discard or disposition information, catcher vessel.* The operator must record in a DFL (see paragraphs (c)(4)(viii)(A) through (E) of this section) the discard or disposition that occurred prior to and during delivery to a buying station, mothership, shoreside processor, or SFP. If no discards or disposition occurred on a given day, write "no discards or disposition."

(A) *Species code and product code.* Record the species code and product code for all discards and disposition of groundfish and PSC Pacific herring, Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs.

(B) *Discard and disposition weight.* Record the daily estimated total round weight of groundfish or Pacific herring PSC discards and disposition, balance forward weight from the previous day, and cumulative total weight since last delivery, calculated by adding the daily totals and balance carried forward from the day before; indicate whether estimated weight is to the nearest pound or nearest 0.001 mt.

(C) *PSC discard numbers.* Record the daily number of PSC discards and disposition, balance forward from the previous day, and cumulative total

number since last delivery of PSC animals (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs).

(D) *Discard and disposition cumulative total.* Summarize cumulative discard and disposition totals of groundfish and PSC animals separately by reporting area, if harvest occurred in the COBLZ or RKCSA, management program, and gear type.

(E) *Discard zero balance forward.* After the offload or transfer of all fish or fish product onboard and prior to the beginning of each fishing trip, the operator must record the balance forward from the previous day as "zero" and start a new logsheet. At the beginning of each fishing trip, nothing shall be carried forward from the previous fishing trip.

(ix) *Discard or disposition information, catcher/processor.* The operator of a catcher/processor using trawl gear must record discard or disposition information in eLandings (see paragraph (e)(10) of this section).

(x) *Catcher vessel delivery information.* The operator must enter the following delivery information (see paragraphs (c)(4)(x)(A) through (C) of this section) for groundfish delivered to a buying station, mothership, shoreside processor, or SFP:

(A) Date (mm/dd) that delivery of harvest was completed,

(B) ADF&G fish ticket number issued to operator by the recipient receiving the delivery, and

(C) Name and ADF&G processor code of recipient.

(5) *Shoreside processor DCPL.* The shoreside processor DCPL has been replaced by eLandings and is no longer available. (See paragraph (e) of this section.)

(i) *Required information, if inactive.* See paragraph (c)(2) of this section.

(ii) *Required information, if active.* A shoreside processor or SFP is active when receiving or processing groundfish.

(6) *Mothership DCPL—(i) Responsibility.* Except as described in paragraph (f)(1)(v) of this section, the operator of a mothership that is required to have an FFP under § 679.4(b) and that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b) is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator must enter into the DCPL any information for groundfish received from catcher vessel, groundfish received from processors for reprocessing or rehandling, and groundfish received from an associated buying station documented on a BSR.

(ii) *Data entry time limits.* The operator of a mothership must record in the DCPL or eLandings the information in the following table for each groundfish delivery within the specified time limit:

DATA ENTRY TIME LIMITS, MOTHERSHIP			
Required information	Record In		Time limit for recording
	DCPL	eLandings	
(A) All catcher vessel or buying station delivery information	X	X	Within 2 hours after completion of receipt of each groundfish delivery
(B) Product information		X	By noon each day to record the previous day's production
(C) Discard or disposition information		X	By noon each day to record the previous day's discard/disposition
(D) All other required information	X	X	By noon of the day following completion of production
(E) Operator sign the completed logsheets	X	X	By noon of the day following the week-ending date of the weekly reporting period
(F) Submit the goldenrod logsheet to the observer	X		After signed by the operator and prior to departure of observer from the mothership.

(iii) *Required information, if inactive.* See paragraph (c)(2) of this section.

(iv) *Required information, if active.* A mothership is active when receiving or processing groundfish. If the mothership identified in paragraph (c)(6)(i) of this

section is active, the operator must record for one day per logsheet in the DCPL, the information described in paragraphs (c)(6)(v) and (vi) of this section and record in eLandings the

information described in paragraphs (c)(6)(v), (vii), and (viii) of this section.

(v) *Identification information.* If active, the operator must record the following information (see paragraphs

(c)(6)(v)(A) through (J) of this section) in the DCPL:

(A) *Page number.* Number the pages in each logbook consecutively, beginning with page 1 for January 1 and continuing throughout the logbook for the remainder of the fishing year.

(B) *Printed name and signature of operator.* The operator's name must be printed in the DCPL. The operator must sign each completed DCPL logsheet as verification of acceptance of the responsibility required in paragraph (a)(2) of this section.

(C) *Vessel information.* Name of mothership as displayed in official documentation, FFP number, and ADF&G processor code.

(D) *Date.* Enter date (mm/dd/yyyy) of each operating day.

(E) *Crew size.* Record the number of crew members (including operator), excluding certified observer(s), on the last day of the weekly reporting period.

(F) *Gear type.* Indicate the gear type of harvester. If gear type is other than those listed, circle "Other" and describe. Use a separate logsheet for each gear type.

(G) *Federal reporting areas.* Record Federal reporting area code (see Figures 1 and 3 to this part) where harvest was completed. Use a separate logsheet for each reporting area.

(H) *COBLZ or RKCSA.* If groundfish was harvested with trawl gear in the COBLZ or RKCSA, use two separate logsheets to record the information: one logsheet for the reporting area that includes COBLZ or RKCSA, and a second logsheet to record the information from the reporting area that does not include COBLZ or RKCSA.

(I) *Observer information.* Record the number of observers aboard, the name(s) of the observer(s), and the observer cruise number(s).

(J) *Management program.* Indicate whether harvest occurred under one of the management programs (see paragraph (a)(1)(iii) of this section). Use a separate logsheet for each management program. If harvest is not under one of the listed management programs, leave blank.

(vi) *Delivery information.* The operator must record delivery information (see paragraphs (c)(6)(vi)(A) through (H) of this section) when unprocessed groundfish deliveries are received by the mothership from a buying station or a catcher vessel. If no deliveries are received for a given day, write "no deliveries."

(A) *Type of delivery.* Enter "CV" or "BS" to indicate if delivery was from a catcher vessel or buying station, respectively.

(B) *Non-submittal of discard report.* Indicate whether the blue logsheet was received from the catcher vessel at the time of catch delivery. If the delivery was from a buying station, leave this column blank. If the blue logsheet is not received from the catcher vessel, enter "NO" and one of the response codes in the following table to describe the reason for non-submittal.

NON-SUBMITTAL OF DISCARD REPORT	CODE
(1) The catcher vessel does not have an FFP	"P"
(2) The catcher vessel is under 60 ft (18.3 m) LOA and does not have an FFP	"P"
(3) The catcher vessel is under 60 ft (18.3 m) LOA and has an FFP	"L"
(4) The catcher vessel delivered an unsorted codend	"U"
(5) Another reason; describe circumstances	"O"

(C) *Vessel identification.* Name and ADF&G vessel registration number of the catcher vessel or buying station (if applicable) delivering the groundfish.

(D) *Receipt time.* Record time (in military format, A.L.T.) when receipt of groundfish delivery was completed.

(E) *Beginning position of receipt.* Record the position coordinates (in latitude and longitude to the nearest minute; indicate E or W for longitude) where receipt of the groundfish delivery began.

(F) *Estimated total groundfish hail weight.* Enter the estimated total hail weight of the combined species of each delivery from a catcher vessel or buying station. Total estimated hail weight is an estimate of the total weight of the entire catch without regard to species. Indicate whether the estimated weight is to the nearest pound or to the nearest 0.001 mt. If a catcher vessel reported discards on a blue DFL but did not deliver groundfish, enter "0" in this column.

(G) *IR/IU species (see § 679.27).* Enter the species code of IR/IU species and the estimated total round weight for each IR/IU species, if applicable; indicate whether estimated weight is to the nearest pound or the nearest 0.001 mt. Use one line to record information for each IR/IU species, including species code and amount of catch. If more than one IR/IU species are to be recorded, the operator must use a separate line for each species.

(H) *ADF&G fish ticket numbers.* If receiving unprocessed groundfish from a catcher vessel, record the ADF&G fish

ticket number that the mothership issued to each catcher vessel. If receiving unprocessed groundfish from an associated buying station, record the ADF&G fish ticket numbers issued by the buying station on behalf of the mothership to the catcher vessel.

(vii) *Product information.* The operator of a mothership must record all groundfish product information in eLandings (see paragraph (e)(10) of this section), including products made from unprocessed groundfish deliveries received from a buying station or a catcher vessel; groundfish received from another processor or other source; and groundfish received for custom processing (see paragraph (a)(7) of this section) by the mothership for another processor or business entity.

(viii) *Discard or disposition information.* The operator of a mothership must record discard and disposition information in eLandings (see paragraph (e)(10) of this section). The discard or disposition information must include:

(A) Discards and disposition that occurred onboard after receipt of groundfish from a catcher vessel or buying station;

(B) Discards and disposition that occurred prior to, during, and after processing of groundfish;

(C) Discards and disposition that were reported on a blue DFL received from a catcher vessel delivering groundfish;

(D) Discards and disposition that are recorded on a blue DFL received from a catcher vessel even though no groundfish are delivered; and

(E) Discards and disposition reported on a BSR received from a buying station delivering groundfish, if different from the blue DFL logsheets submitted by catcher vessels to the buying station.

(d) *Buying Station Report (BSR)—(1) Responsibility—(i) Separate BSR.* In addition to the information required at paragraphs (a)(5) and (6) of this section, the operator or manager of a buying station that receives or delivers groundfish harvested from the GOA or BSAI in association with a shoreside processor or SFP as defined in paragraph (c)(5) of this section or a mothership as defined in paragraph (c)(6) of this section, must complete and retain a separate BSR for each delivery of unprocessed groundfish or donated prohibited species received from a catcher vessel on behalf of an associated processor.

(ii) *BSR attachments.* The operator or manager must ensure that the following (see paragraphs (d)(1)(ii)(A) through (C) of this section) accompanies each groundfish delivery from the landing site to the associated processor:

(A) A complete and accurate BSR that describes the delivery;

(B) Any blue DFL logsheets or equivalent printed ELB discard reports received from a catcher vessel; and

(C) Copies of all ADF&G fish tickets issued to the catcher vessel on behalf of the associated processor.

(iii) The operator of a catcher vessel, by prior arrangement with an associated processor, may function as a buying station for his own catch as follows:

(A) By shipping his groundfish catch with a copy of the BSR directly to that processor via truck or airline in the event that the processor is not located where the harvest is offloaded; or

(B) By driving a truck that contains his catch and a copy of the BSR to the processor.

(2) *Data entry time limits.* The operator or manager of a buying station must record in the BSR all required information and sign the BSR within 2 hours of completion of delivery from a catcher vessel.

(3) *Required information, if inactive.* The operator or manager of a buying station is not required to record information if inactive.

(4) *Required information, if active.* A buying station is active when receiving, discarding, or delivering groundfish for an associated processor. The operator or manager of a buying station must record the following information (see paragraphs (d)(4)(i) through (x) of this section) on a BSR for each delivery:

(i) *Original/revised report.* If a BSR is the first submitted to the Regional Administrator for a given date, gear type, and reporting area, indicate "ORIGINAL REPORT." If a report is a correction to a previously submitted BSR for a given date, gear type, and reporting area, indicate "REVISED REPORT."

(ii) *Identification of buying station.* Enter name and ADF&G vessel registration number if a vessel; or name, license number, and state of license issuance if a vehicle. The name should be recorded as it is displayed in official documentation.

(iii) *Operator or manager name and signature.* The operator or manager must sign the completed BSR prior to delivery of harvest to a mothership, shoreside processor, or SFP. This signature is verification by the operator or manager of acceptance of the responsibility required in paragraphs (d)(1) and (2) of this section.

(iv) *Management program.* Indicate whether harvest occurred under a management program (see paragraph (a)(1)(iii) of this section). If harvest is not under one of the listed management programs, leave blank.

(v) *Gear type.* Indicate gear type of harvester.

(vi) *Federal reporting area.* Indicate Federal reporting area (see Figures 1 and 3 to this part) from which groundfish were harvested.

(vii) *Crab protection areas.* If harvester gear type was trawl and gear retrieval occurred in the COBLZ or RKCSA (see Figures 11 and 13 to this part), use two separate BSRs to record the information: one BSR for the reporting area that includes COBLZ or RKCSA, and a second BSR to record the information from the reporting area that does not include COBLZ or RKCSA.

(viii) *Associated processor.* Enter the name, ADF&G processor code, FFP number or FPP number of the associated processor, date (mm/dd/yyyy) and time (A.l.t., military format) delivery was completed.

(ix) *Catcher vessel delivery information—(A) Catcher vessel identification.* Name and ADF&G vessel registration number of catcher vessel making the delivery.

(B) *Non-submittal of discard report.* Indicate whether the blue logsheet was received from the catcher vessel at the time of catch delivery. If the blue logsheet is not received from the catcher vessel, enter "NO" and one of the following response codes to describe the reason for non-submittal.

NON-SUBMITTAL OF DISCARD REPORT	CODE
(1) The catcher vessel does not have an FFP	"P"
(2) The catcher vessel is under 60 ft (18.3 m) LOA and does not have an FFP	"P"
(3) The catcher vessel is under 60 ft (18.3 m) LOA and has an FFP	"L"
(4) The catcher vessel delivered an unsorted codend	"U"
(5) Another reason; describe circumstances	"O"

(C) *ADF&G fish ticket number.* Enter ADF&G fish ticket number issued to catcher vessel.

(D) *Species codes and scale weight.* In addition to recording the estimated total delivery weight or actual scale weight of a catcher vessel delivery, if the operator or manager of the buying station sorted the delivery prior to delivery to an associated processor, he or she may enter specific species code and scale weights of individual species to the BSR; indicate whether to the nearest pound or to the nearest 0.001 mt.

(E) *Estimated total groundfish hail weight.* Enter the estimated total groundfish hail weight or actual scale weight of delivery. Estimated total hail weight is an estimate of the total weight of the entire catch without regard to species. Indicate whether to the nearest pound or to the nearest 0.001 mt.

(x) *Discard and disposition information—(A) Discard.* The operator or manager of a buying station must record in a BSR, discard or disposition information that:

(1) Occurred on and was reported by a catcher vessel on a blue logsheet;

(2) Occurred on the buying station prior to delivery to an associated processor; and

(3) Was recorded on a blue logsheet submitted to the buying station by a catcher vessel when no groundfish were delivered by the catcher vessel (for example, disposition code 95 describes fish or fish products eaten onboard or taken off the vessel for personal use).

(B) *No discards.* If no discards or disposition for a delivery, write "no discards."

(C) *Discard or disposition weight.* Total discard or disposition weight of groundfish and herring PSC by species code and product code (indicate whether to nearest pound or to the nearest 0.001 mt).

(D) *PSC discard or disposition numbers.* Total PSC discard or disposition number of animals by species code and product code.

(e) *Interagency Electronic Reporting System (IERS) and eLandings—(1) Responsibility—(i) Hardware, software, and Internet connectivity.* A User must obtain at his or her own expense hardware, software, and Internet connectivity to support Internet submissions of commercial fishery landings for which participants report to NMFS: landings data, production data, and discard or disposition data. The User must enter this information via the Internet by logging on to the eLandings system at <http://elandings.alaska.gov> or other NMFS-approved software or by using the desktop client software.

(ii) *Reporting of non-IFQ groundfish.* If the User is unable to submit commercial fishery landings of non-IFQ groundfish due to hardware, software, or Internet failure for a period longer than the required reporting time, contact NMFS Inseason Management at 907-586-7228 for instructions. When the hardware, software, or Internet is restored, the User must enter this same information into eLandings or other NMFS-approved software.

(iii) *Reporting of IFQ crab, IFQ halibut, and IFQ sablefish.* If the User is unable to submit commercial fishery

landings of IFQ crab, IFQ halibut, CDQ halibut, or IFQ sablefish due to hardware, software, or Internet failure for a period longer than the required reporting time, or a change must be made to information already submitted, the User must complete an IFQ manual landing report. Manual landing instructions must be obtained from OLE, Juneau, AK, at 800-304-4846 (Select Option 1).

(A) The User must complete all questions on the manual report, even if only one item has changed. The following additional information is required: whether the report is original or revised, name, telephone number, and fax number of individual submitting the manual landing report.

(B) The User must fax the IFQ manual landing report to 907-586-7313.

(C) The User must retain the paper copies of IFQ manual landing reports as indicated at paragraph (a)(5) of this section and make them available upon request of NMFS observers and authorized officers as indicated at paragraph (a)(6) of this section.

(2) *eLandings processor registration.*

(i) Before a User can use the eLandings system to report landings, production, discard or disposition data, he or she must request authorization to use the system, reserve a unique UserID, and obtain a password by using the Internet to complete the eLandings processor registration at <https://elandings.alaska.gov/elandings/Register>.

(ii) Upon registration acceptance, the User must print, sign, and mail the User Agreement Form to NMFS/RAM eLandings Registration, P.O. Box 21668, Juneau, AK 99802-1668; or fax a signed form to 907-586-7354, Attn: eLandings Registration; or deliver the signed form by courier to NMFS/RAM eLandings Registration, 709 West Ninth Street, Suite 713, Juneau, AK 99801. Confirmation will be e-mailed to indicate that the User is registered, authorized to use eLandings, and that the UserID and User's account are enabled.

(iii) The User's signature on the registration form means that the User agrees to the following terms (see paragraphs (e)(2)(iii)(A) through (C) of this section):

(A) To use eLandings access privileges only for submitting legitimate fishery landing reports;

(B) To safeguard the UserID and password to prevent their use by unauthorized persons; and

(C) To ensure that the User is authorized to submit landing reports for the processor permit number(s) listed.

(3) *Information required for eLandings processor registration form.* The User must enter the following information (see paragraphs (e)(3)(i) through (ix) of this section) to obtain operation registration and UserID registration:

(i) *Operation type.* Select the operation type from the dropdown list according to the following table:

For this Federal category:	Enter one of these eLandings operation types:
(A) Shoreside processor or SFP	(1) Plant/receiver
	(2) Custom processing
(B) Mothership	At-sea
(C) Catcher/processor	At-sea
(D) Buying station	(1) Tender
	(2) Buying station

(ii) *Operation name.* Enter a name that will refer to the specific operation. For example, if the plant is in Kodiak and the company is East Pacific Seafoods, the operation name might read "East Pacific Seafoods-Kodiak."

(iii) *ADF&G processor code.* Enter ADF&G processor code.

(iv) *Federal permit number.* Enter all the federal permits associated with the operation.

(A) *Groundfish shoreside processor or SFP.* If a groundfish shoreside processor or SFP, enter the FPP number.

(B) *Groundfish catcher/processor or mothership.* If a groundfish catcher/processor or mothership, enter the FPP number.

(C) *Registered Buyer.* If a Registered Buyer, enter the Registered Buyer permit number.

(D) *Registered Crab Receiver.* If a Registered Crab Receiver, enter the Registered Crab Receiver permit number.

(v) *Port code.* Enter the home port code (see Tables 14a, 14b, and 14c to this part) for the operation.

(vi) *ADF&G vessel registration number.* If a mothership, catcher/processor, or tender operation, the operator must enter the ADF&G vessel identification number of the vessel.

(vii) *Vehicle license number.* If a buying station operation that is a vehicle, enter vehicle license number and the state of license issuance.

(viii) *Physical operation.* If a buying station or custom processor, enter the following information to identify the associated processor where the processing will take place: operation type, ADF&G processor code, and

applicable FFP number, FPP number, Registered Buyer permit number, and Registered Crab Receiver permit number.

(ix) *UserID registration for primary User.* Each operation requires a primary User. Enter the following information for the primary User for the new operation: create and enter a UserID, initial password, company name, User name (name of the person who will use the UserID), city and state where the operation is located, business telephone number, business fax number, business e-mail address, security question, and security answer.

(4) *Information entered automatically for eLandings landing report.* eLandings autofills the following fields from processor registration records (see paragraph (e)(2) of this section): UserID, processor company name, business telephone number, e-mail address, port of landing, ADF&G processor code, and Federal permit number. The User must review the autofilled cells to ensure that they are accurate for the landing that is taking place. eLandings assigns a unique landing report number and an ADF&G electronic fish ticket number upon completion of data entry.

(5) *Shoreside processor or SFP landings report.* The manager of a shoreside processor or SFP that receives groundfish from a catcher vessel issued an FFP under § 679.4 and that is required to have an FPP under § 679.4(f) must use eLandings or other NMFS-approved software to submit a daily landings report during the fishing year to report processor identification information and the following information under paragraphs (e)(5)(i) through (iii) of this section:

(i) *Information entered for each groundfish delivery to a shoreside processor and SFP.* The User for a shoreside processor or SFP must enter the following information (see paragraphs (e)(5)(i)(A) through (C) of this section) for each groundfish delivery (other than IFQ sablefish) provided by the operator of a catcher vessel, the operator or manager of an associated buying station, and from processors for reprocessing or rehandling product into eLandings or other NMFS-approved software:

(A) *Delivery information.* (1) Number of observers onboard.

(2) For crew size, enter the number of licensed crew aboard the vessel, including the operator.

(3) Management program name and identifying number, if any, in which harvest occurred (see paragraph (a)(1)(iii) of this section).

(4) ADF&G groundfish statistical area of harvest.

(5) For date of landing, enter date (mm/dd/yyyy) that the delivery was completed.

(6) Indicate (YES or NO) whether delivery is from a buying station.

(7) If the delivery is received from a buying station other than a tender, indicate the name of the buying station. If the delivery is received from a buying station that is a tender, enter the ADF&G vessel registration number.

(8) If delivery is received from a catcher vessel, indicate the ADF&G vessel registration number of the vessel.

(9) Indicate whether the blue logsheet was received from the catcher vessel at the time of catch delivery. If the blue logsheet is not received from the catcher vessel, enter "NO" and select the applicable code from the following table to explain the reason provided by the catcher vessel for not supplying this copy:

NON-SUBMITTAL OF DISCARD REPORT	CODE
(i) The catcher vessel does not have an FFP	"P"
(ii) The catcher vessel is under 60 ft (18.3 m) LOA and does not have an FFP	"P"
(iii) The catcher vessel is under 60 ft (18.3 m) LOA and has an FFP	"L"
(iv) The catcher vessel delivered an unsorted codend	"U"
(v) Another reason; describe circumstances	"O"

(10) Gear type of harvester.

(11) Total estimated hail weight (to the nearest pound).

(12) ADF&G fish ticket number provided to catcher vessel (eLandings assigns an ADF&G fish ticket number to the landing report).

(B) *Landings information.* The User for a shoreside processor or SFP must record the following landings information (see paragraphs (e)(5)(i)(B)(1) and (2) of this section) for all retained species from groundfish deliveries:

(1) Date of landing (mm/dd/yyyy).

(2) Landed scale weight (to the nearest pound) by species code and delivery condition code. Obtain actual weights for each groundfish species received and retained by:

(i) Sorting according to species codes and direct weighing of that species, or

(ii) Weighing the entire delivery and then sorting and weighing the groundfish species individually to determine their weights.

(C) *Discard or disposition information.* The User must record:

(1) Discard or disposition of fish: that occurred on and was reported by a catcher vessel; that occurred on and was reported by a buying station; and that occurred prior to, during, and/or after production of groundfish at the shoreside processor or SFP. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of discards or disposition.

(2) If groundfish or PSC herring, enter species code, delivery condition code, disposition code, and weight (to the nearest pound), and

(3) If PSC halibut, salmon, or crab, enter species code, delivery condition code, disposition code, and count (in numbers of animals).

(ii) *Submittal time limit.* The User for a shoreside processor or SFP must enter information described at paragraph (e)(5)(i) of this section into eLandings or other NMFS-approved software for each groundfish delivery from a specific vessel by noon of the day following completion of the delivery.

(iii) *Compliance.* By using eLandings, the User for the shoreside processor or SFP and the catcher vessel operator or buying station operator or manager providing information to the User for the shoreside processor or SFP accept the responsibility of and acknowledge compliance with § 679.7(a)(10).

(6) *Mothership landings report.* The operator of a mothership that is issued an FFP under § 679.4(b) and that receives groundfish from catcher vessels required to have an FFP under § 679.4 is required to use eLandings or other NMFS-approved software to submit a daily landings report during the fishing year to report processor identification information and the following information under paragraphs (e)(6)(i) through (iii) of this section:

(i) *Information entered for each groundfish delivery to a mothership.* The User for a mothership must enter the following information (see paragraphs (e)(6)(i)(A)(1) through (11) of this section) provided by the operator of a catcher vessel, operator or manager of an associated buying station, or information received from processors for reprocessing or rehandling product.

(A) *Delivery information.* (1) Number of observers onboard.

(2) Crew size (including operator).

(3) Management program name and identifying number, if any, in which harvest occurred (see paragraph (a)(1)(iii) of this section).

(4) ADF&G groundfish statistical area of harvest.

(5) Date (mm/dd/yyyy) that delivery was completed.

(6) If the delivery is received from a tender, enter the ADF&G vessel registration number of the tender.

(7) If delivery received from a catcher vessel, enter the ADF&G vessel registration number of the vessel.

(8) Indicate whether the blue logsheet was received from the catcher vessel at the time of catch delivery. If the blue logsheet was not received from the catcher vessel, enter "NO" and select a code from the following table to explain the reason provided by the catcher vessel for not supplying this copy.

NON-SUBMITTAL OF DISCARD REPORT	CODE
(i) The catcher vessel does not have an FFP	"P"
(ii) The catcher vessel is under 60 ft (18.3 m) LOA and does not have an FFP	"P"
(iii) The catcher vessel is under 60 ft (18.3 m) LOA and has an FFP	"L"
(iv) The catcher vessel delivered an unsorted codend	"U"
(v) Another reason; describe circumstances	"O"

(9) Gear type of harvester.

(10) Total estimated round weight by species (pounds).

(11) ADF&G fish ticket number provided to catcher vessel (eLandings assigns an ADF&G fish ticket number to the landing report).

(B) *Discard or disposition information.* (1) The User must record discard or disposition information that occurred on and was reported by a catcher vessel; that occurred on and was reported by a buying station; and that occurred prior to, during, and after production of groundfish at the mothership. Discards and dispositions also must be recorded when no groundfish are delivered but the blue DFL is submitted by a catcher vessel containing records of discards or disposition.

(2) If groundfish or PSC herring, enter species code, delivery condition code, disposition code, and weight (to the nearest pound), and

(3) If PSC halibut, salmon, or crab, enter species code, delivery condition code, disposition code, and count (in numbers of animals).

(ii) *Submittal time limit.* The User for a mothership must enter information described at paragraph (e)(6)(i) of this section into eLandings or other NMFS-approved software for each groundfish delivery from a specific vessel by noon of the day following the delivery day.

(iii) *Compliance.* By using eLandings, the User for the mothership and the catcher vessel operator or buying station operator providing information to the User for the mothership accept the responsibility of and acknowledge compliance with § 679.7(a)(10).

(7) *Registered Buyer landings report.* A person who is issued a Registered Buyer permit under § 679.4(d)(3) and who receives IFQ halibut or IFQ sablefish from an IFQ permit holder or who receives CDQ halibut from a CDQ permit holder at any time during the fishing year is required to use eLandings or other NMFS-approved software to submit landings reports with the following information from paragraphs (e)(7)(i) and (ii) of this section:

(i) *Information entered for each IFQ halibut, CDQ halibut, and IFQ sablefish delivery.* The User for a Registered Buyer must enter the following information (see paragraphs (e)(7)(i)(A) through (E) of this section) for each IFQ halibut, CDQ halibut, and IFQ sablefish delivery into eLandings or other NMFS-approved software:

(A) *User identification.* UserID and password of person assigned for that system.

(B) *Landing date.* Date (mm/dd/yyyy) of the landing.

(C) *Landing location.* Location (port code) of the landing (See Tables 14a, 14b, and 14c to this part).

(D) *Permit numbers.* Permit number of the IFQ permit holder, and any IFQ hired master permit holder, or CDQ hired master permit holder harvesting the fish and permit number of Registered Buyer receiving the IFQ halibut, IFQ sablefish, or CDQ halibut.

(E) *Delivery information.* As reported by the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder including the information in paragraphs (e)(7)(i)(E)(1) through (9) of this section):

(1) Harvesting vessel's ADF&G vessel registration number.

(2) Gear code of gear used to harvest IFQ halibut, IFQ sablefish, or CDQ halibut.

(3) ADF&G fish ticket number(s) for the landing (after the initial eLandings report is submitted, eLandings assigns an ADF&G fish ticket number to the landing report).

(4) ADF&G statistical area of harvest.

(5) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, provide the IFQ regulatory area of harvest.

(6) Except as provided in paragraph (e)(7)(i)(E)(7) of this section, initial accurate scale weight(s) (to the nearest pound) made at the time of offloading for IFQ halibut, IFQ sablefish, or CDQ

halibut sold and retained (where retained includes fish intended for personal use, fish weighed and reloaded for delivery to another processor, and fish landed but rejected at the dock by the Registered Buyer); species codes; delivery condition code; and disposition code for each ADF&G statistical area of harvest.

(7) Accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight provided in paragraph (e)(7)(i)(E)(6) of this section, at time of offload, if the vessel operator is a Registered Buyer reporting an IFQ sablefish landing.

(8) Indicate whether initial accurate scale weight is given with or without ice and slime. Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2-percent deduction for ice and slime and must be reported as fish weights without ice and slime. The 2-percent deduction is made by NMFS, not the submitter.

(9) Indicate whether IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear.

(ii) *Signatures for IFQ halibut, CDQ halibut, or IFQ sablefish deliveries.* (A) The User for the Registered Buyer must print the completed groundfish landing report (ADF&G electronic groundfish ticket) and the groundfish IFQ landing receipt. The User must review the autofilled data entry cells to ensure that they are accurate for the landing that is taking place.

(B) The User for the Registered Buyer, plus the IFQ permit holder or the IFQ hired master permit holder or CDQ hired master permit holder, must acknowledge the accuracy of the printed IFQ halibut, CDQ halibut, or IFQ sablefish landing receipt, and if necessary, IFQ manual landing report, by entering printed name, signature, and date.

(iii) *Time limits—(A) Landing hours.* A landing of IFQ halibut, CDQ halibut, or IFQ sablefish may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time is granted in advance by a clearing officer.

(B) *Landing receipt signatures.* The User for the Registered Buyer and the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must sign the groundfish IFQ landing receipt within six hours after all IFQ halibut, CDQ halibut, and IFQ sablefish are offloaded from a harvesting vessel and prior to shipment

or transfer of the fish from the landing site.

(C) *Landing completion.* The User for the Registered Buyer must submit a completed IFQ landing report, as described in this paragraph (e)(7), within six hours after all IFQ halibut, CDQ halibut, and IFQ sablefish are offloaded from a specific vessel and prior to shipment or transfer of said fish from the landing site.

(iv) *IFQ manual landing report.* See paragraph (e)(1)(iii) of this section.

(8) *Registered Crab Receiver (RCR) IFQ crab landings report.* (i) A person who is issued an RCR permit under § 680.4(i) of this chapter and who receives IFQ crab from a crab IFQ permit holder or crab IFQ hired master is required to use eLandings to submit a landings report to report every landing of IFQ crab and incidental groundfish.

(ii) An RCR using a catcher/processor is required to submit a crab landings report using eLandings in a format approved by NMFS. NMFS will provide format specifications upon request. Interested parties may contact NMFS Alaska Region, Sustainable Fisheries Division, Catch Accounting/Data Quality, P.O. Box 21668, Juneau, AK 99802-1668, telephone 907-586-7228.

(iii) *Information entered for each IFQ crab delivery.* The User for the RCR must enter the following information (see paragraphs (e)(8)(iii)(A) through (C) of this section) into eLandings or other NMFS-approved software for each IFQ crab delivery:

(A) *Permit numbers.* RCR permit number, IFQ permit number, and IPQ permit number, as appropriate.

(B) *Operation type.* (1) If a shoreside processor or SFP, enter type of processing operation and port code from Table 14a or 14b to this part.

(2) If a catcher/processor, enter operation type from Table 14c to this part.

(C) *Delivery information.* As reported by IFQ permit holder.

(1) ADF&G vessel registration number of the delivering vessel.

(2) Date (mm/dd/yyyy) fishing began.

(3) Date (mm/dd/yyyy) of the IFQ crab landing.

(4) ADF&G fish ticket number (automatically supplied).

(5) ADF&G statistical area of harvest (All ADF&G statistical areas are translated to the NMFS reporting area and the IPHC reporting area by eLandings.).

(6) Species code of catch from Table 2 to part 680.

(7) Delivery-condition codes of catch from Table 3a to this part.

(8) Number of crab retained and sold condition code, product type, size/

grade, and sold pounds; and optionally, price per pound.

(9) Scale weight of deadloss (to the nearest pound) and scale weight of crab retained for personal use (to the nearest pound). Deadloss and personal use crab that an IPQ holder did not purchase are not debited from the IPQ holder's account.

(iv) *Information entered for IFQ crab custom processing landings.* In addition to the information required in paragraph (e)(8)(iii) of this section, if custom processing IFQ crab, the User for the RCR must enter the ADF&G processor code of the person for which the IFQ crab was custom processed.

(v) *Signatures for IFQ crab deliveries.* (A) The User for the RCR must print the completed crab landing report (ADF&G electronic crab ticket) and the crab IFQ landing receipt. The User must review the autofilled data entry cells to ensure that they are accurate for the landing that is taking place.

(B) The User for the Registered Crab Receiver (RCR), plus the IFQ permit holder or IFQ hired master permit holder, must acknowledge the accuracy of the printed IFQ crab landing receipt, and, if necessary, IFQ manual landing report, by entering printed name, signature, and date.

(vi) *Time limits.* (A) Except as indicated in paragraph (e)(8)(vi)(B) of this section, the User for the RCR is required to submit a crab landing report described at this paragraph (e)(8) to NMFS within six hours after all crab is offloaded from the vessel.

(B) For IFQ crab harvested on a catcher/processor, the User for the RCR is required to submit an IFQ crab landing report to NMFS by Tuesday noon after the end of each weekly reporting period in which IFQ crab was harvested.

(C) The User for the RCR and the IFQ permit holder or IFQ hired master permit holder must enter printed name and sign the crab IFQ landing receipt within six hours after all crab is offloaded from the harvesting vessel.

(vii) *Landing document retention.* The User must retain each landing report and landing receipt per paragraph (a)(5) of this section.

(viii) *IFQ manual landing report for crab.* See paragraph (e)(1)(iii) of this section.

(9) *Shoreside processor or SFP information entered for production report.* The manager of a shoreside processor or SFP that is required to have an FPP under § 679.4(f) must use eLandings or other NMFS-approved software during the fishing year to submit a production report to report daily processor identification

information and all groundfish production data. The User must retain a copy of each production report per paragraphs (a)(5) and (6) of this section.

(i) *Contents.* eLandings autofills the following fields when creating a production report for a shoreside processor or SFP: FPP number, company name, ADF&G processor code, User name, email address, and telephone number. The User must review the autofilled cells to ensure that they are accurate for the current report. In addition, the User for the shoreside processor or SFP must enter the following information (see paragraphs (e)(9)(i)(A) through (F) of this section):

(A) *Date.* Reporting date (mm/dd/yyyy).

(B) *Observers.* Number of observers onsite.

(C) *Area of harvest.* Whether harvested in GOA or BSAI.

(D) *Product description.* Species code, product type, and product code of product.

(E) *Product weight.* Enter actual scale weight of product to the nearest pound.

(F) *No production/no deliveries (inactive).* If there was no production or deliveries for the day, mark the "No Production" and/or "No Deliveries" boxes.

(ii) *Submittal time limits.* When active pursuant to paragraph (c)(5)(ii) of this section, the User for a shoreside processor or SFP must submit a production report by noon each day to record the previous day's production information. If a shoreside processor or SFP using eLandings is not taking deliveries over a weekend, the User or manager may transmit the eLandings production report to NMFS on the following Monday.

(10) *Catcher/processor or mothership information entered for production report—(i) Catcher/processor.* The operator of a catcher/processor that is issued an FPP under § 679.4 and that harvests groundfish is required to use eLandings or other NMFS-approved software to submit a production report to record and report daily processor identification information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(ii) *Mothership.* The operator of a mothership that is issued an FPP under § 679.4 and that receives groundfish is required to use eLandings or other NMFS-approved software to submit a production report to record and report daily processor identification information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(iii) *Contents.* eLandings autofills the following fields when creating a production report for a catcher/processor or mothership: FPP number, company name, ADF&G processor code, User name, email address, and telephone number. The User must review the autofilled cells to ensure that they are accurate for the current report. In addition, the User for the catcher/processor or mothership must enter the information in paragraphs (e)(10)(iii)(A) through (N) of this section:

(A) *Date.* Reporting date (mm/dd/yyyy).

(B) *Designation.* From Table 14c to this part, enter whether the processor is a catcher/processor = FCP or a mothership = FLD.

(C) *Crew size.* Including operator.

(D) *Management program.* Enter management program and identifying number, if any, in which harvest occurred (see paragraph (a)(1)(iii) of this section).

(E) *Gear type of harvester.* Enter the gear type used by the harvester.

(F) *Federal Reporting Area of harvest.* Enter the Federal Reporting Area where harvest was made.

(G) *COBLZ or RKCSA.* Indicate whether fishing occurred in COBLZ or RKCSA (if applicable).

(H) *Product description.* Species code, product type, and product code of product.

(I) *Product weight.* Enter product weight in metric tons to the nearest 0.001 mt.

(J) *No production (inactive).* If there was no production for the day, mark the "No Production" box.

(K) *Discard description.* The operator must record the discard or disposition that occurred prior to, during, and after production of groundfish by species code and disposition code of discards and disposition.

(L) *Discard weight.* Daily weight of groundfish and the daily weight of herring PSC to the nearest 0.001 mt.

(M) *PSC numbers.* Daily number of PSC animals (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs) by species codes and product codes.

(N) *ADF&G statistical area.* Must be reported beginning January 1, 2009.

(iv) *Submittal time limits.* When a mothership is active pursuant to paragraph (c)(6)(iv) of this section, a catcher/processor longline or pot gear is active pursuant to paragraph (c)(3)(iv)(B) of this section, or a catcher/processor trawl gear is active pursuant to paragraph (c)(4)(iv)(B) of this section, the User for a mothership or catcher/processor must submit a production report by noon each day to record the

previous day's production information. If a vessel is required to have 100 percent observer coverage or more, the User may transmit a production report for Friday, Saturday, and Sunday no later than noon on the following Monday.

(11) *Printing of landing reports, landing receipts, and production reports.* (i) The User daily must retain a printed paper copy onsite or onboard of:

(A) Each landing report (ADF&G electronic groundfish tickets or electronic crab tickets).

(B) Each production report.

(C) If IFQ halibut, IFQ sablefish, or CDQ halibut, each groundfish IFQ landing receipt.

(D) If IFQ crab, each crab IFQ landing receipt.

(ii) In addition to paragraph (e)(11)(i) of this section, the mothership operator or User must print an additional copy of each landing report and provide it to the operator of the catcher vessel delivering groundfish to the mothership by 1200 hours, A.L.T., on Tuesday following the end of applicable weekly reporting period.

(12) *Retention and inspection of landing reports, landing receipts, and production reports.* The User must retain a printed copy of each IFQ landing report (ADF&G electronic groundfish ticket or electronic crab ticket), crab IFQ landing receipt, groundfish IFQ landing receipt, and production report as indicated at paragraphs (a)(5) and (6) of this section. The User must make available the printed copies upon request of NMFS observers and authorized officers as indicated at paragraph (a)(5) of this section.

(f) *Electronic logbooks (ELBs).* The operator may use a combination of a NMFS-approved ELB (instead of a DFL or DCPL) and eLandings to record and report groundfish information. To satisfy ELB use requirements, the operator after data entry must routinely create the following three products: an ELB logsheet, an ELB discard report, and an ELB data export.

(1) *Responsibility.* The operator must notify the Regional Administrator by fax at 907-586-7465 to ensure that NMFS knows that the operator is using a NMFS-approved ELB instead of a DFL or DCPL, prior to participating in any Federal fishery.

(i) *Catcher vessel longline and pot gear ELB.* The operator of a catcher vessel using longline and pot gear may use a NMFS-approved catcher vessel longline or pot gear ELB in lieu of using the NMFS-prescribed catcher vessel longline or pot gear DFL required at paragraph (c)(3) of this section.

(ii) *Catcher/processor longline and pot gear ELB.* The operator of a catcher/processor using longline or pot gear may use a combination of a NMFS-approved catcher/processor longline or pot gear ELB and eLandings to record and report groundfish information. The operator may use a NMFS-approved catcher/processor longline and pot gear ELB to record daily processor identification information and catch-by-set information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

(iii) *Catcher vessel trawl gear ELB.* The operator of a catcher vessel using trawl gear may use a NMFS-approved catcher vessel trawl gear ELB in lieu of using the NMFS-prescribed catcher vessel trawl gear DFL required at paragraph (c)(4) of this section.

(iv) *Catcher/processor trawl gear ELB.* The operator of a catcher/processor using trawl gear may use a combination of a NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish information. In the ELB, the operator would record daily processor identification information and catch-by-haul information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

(v) *Mothership ELB.* The operator of a mothership may use a combination of a NMFS-approved mothership ELB and eLandings to record and report groundfish information. The operator may use a NMFS-approved mothership ELB to record daily processor identification information and catcher vessel and buying station groundfish delivery information. In eLandings, the operator must record daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

(vi) If using a NMFS-approved ELB, the operator is not required to quarterly submit logsheets to OLE.

(2) *Requirements for using an ELB—*

(i) *Use a NMFS-approved ELB.* The operator must use only a NMFS-approved ELB. The Regional Administrator maintains a list of approved ELBs on the Alaska Region NMFS website at <http://alaskafisheries.noaa.gov> (see also § 679.28(h) for approval of vendor software).

(ii) *Keep a current copy of DFL or DCPL onboard.* To ensure proper recording of the vessel's fishing activity in the event of problems with the ELB, the operator must keep a current copy

of the appropriate DFL or DCPL onboard. In the event that electronic transmission is not made or confirmed for the ELB, the operator must enter information into the paper DFL or DCPL in accordance with the regulations at paragraphs (c)(1) through (c)(4) of this section. The operator must transfer any information recorded in a DFL or DCPL to the ELB when transmission resumes function.

(iii) *Enter all required information into the ELB—*(A) *Inactive.* The operator must enter all required information, if inactive (see paragraph (c)(2) of this section).

(B) *Active.* The operator must enter all required information, if active (see paragraph (c)(3), (c)(4), or (c)(6) of this section, as appropriate).

(1) Record the haul number or set number, time and date gear set, time and date gear hauled, begin and end position, CDQ group number (if applicable), and haul weight for each haul or set within 2 hours after completion of gear retrieval.

(2) Daily complete ELB data entry and printing of copies as indicated in paragraph (f)(3)(i) of this section.

(iv) *Regularly backup ELB data.* The operator must regularly backup ELB data to ensure that data are not lost in the event of hardware or software problems.

(v) *Correct errors in ELB data.* If after an ELB discard report and ELB logsheet are printed, an error is found in the data, the operator must make any necessary changes to the data, print a new copy of the ELB discard report and ELB logsheet, and export the revised file to NMFS. The operator must retain both the original and revised ELB reports.

(3) *Printed copies.* Upon completion of ELB data entry each day, the operator must print the following information (see paragraphs (f)(3)(i) and (ii) of this section) in the NMFS-specified format:

(i) *ELB logsheet.* (A) Print a copy of an ELB logsheet when a vessel is active, by noon each day to record the previous day's ELB information.

(B) Print one ELB logsheet to describe a continuous period of inactivity, when a vessel is inactive.

(C) Print a copy of the ELB logsheet for the observer's use if an observer is present, by noon each day to record the previous day's ELB information.

(ii) *ELB discard report.* (A) Print a copy of an ELB discard report upon completion of each fishing trip or each offload of fish.

(B) If an observer is present, print a copy of the ELB discard report for the observer's use upon completion of each fishing trip or each offload of fish.

(4) *Signatures*—(i) *ELB logsheet*. The operator daily must sign and date each printed ELB logsheet by noon each day to record the previous day's ELB information. The signature of the operator is verification of acceptance of the responsibility required in paragraph (a)(2) of this section.

(ii) *ELB discard report*. The operator daily must sign and date each printed ELB discard report upon completion of each fishing trip or each offload of fish. The signature of the operator is verification of acceptance of the responsibility required in paragraph (a)(2) of this section.

(5) *Submittal time limits*. (i) The operator of a catcher vessel using an ELB must upon delivery of catch submit the ELB discard report to the mothership, shoreside processor, or SFP.

(ii) The operator or manager of a buying station that receives groundfish catch from a catcher vessel using an ELB must upon delivery of catch submit the ELB discard report to the mothership, shoreside processor, or SFP, and submit the ELB data export directly to the Regional Administrator or through the mothership, shoreside processor, or SFP.

(6) *Retention*. The operator must keep a signed copy of each ELB logsheet and each ELB discard report, filed in sequence for immediate access by authorized personnel as described at paragraph (a)(5) of this section.

(7) *ELB data export*. The operator must transmit an ELB data export to NMFS at the specified e-mail address within 24 hours of completing each fishing trip or offload, as described under paragraph (f)(7)(i) or (ii) of this section in the following manner:

(i) Directly to NMFS as an email attachment; or

(ii) If a catcher vessel, send directly to NMFS as an email attachment or to NMFS through a shoreside processor, SFP, or mothership who received his/her groundfish catch. Through a prior agreement with the catcher vessel, the

operator of a mothership or the manager of a shoreside processor or SFP will forward the ELB data export to NMFS as an email attachment within 24 hours of completing receipt of the catcher vessel's catch.

(8) *Return receipt*. (i) Upon receiving an ELB data export, NMFS will generate a dated return-receipt to confirm receipt of the ELB data. If errors exist in the data transmitted to NMFS, the receipt will identify the errors. If errors are identified, the operator must correct the errors and send a revised transmission to NMFS which will then confirm acceptance of the ELB data.

(ii) The operator must retain the NMFS return receipt as described in paragraph (a)(5) of this section.

(iii) If a return receipt from NMFS is not received within 24 hours, the operator of the catcher vessel, the operator of a catcher/processor, the operator of the mothership, or the manager of the shoreside processor or SFP forwarding the ELB data export for the operator of the catcher vessel, must contact NMFS by telephone at 907-586-7228 or fax at 907-586-7131 for instructions.

(g) * * *

(1) *General requirements*. Except as provided in paragraphs (g)(2)(i) through (v) of this section, the operator or manager must record on a PTR those species that are listed in Tables 2a and 2c to this part when those species are transferred out of the facility or off the vessel and may also record species listed in Table 2d to this part.

* * * * *

(h) *Check-in/Check-out report*—(1) *Requirement*. Except as described in paragraph (h)(2) of this section, the operator of a catcher/processor or mothership and manager of a shoreside processor or SFP must submit to NMFS a check-in report (BEGIN message) prior to becoming active and a check-out report (CEASE message) for every check-in report submitted. The check-in report and check-out report must be

submitted by fax to 907-586-7131, or by e-mail to erreports.alaskafisheries@noaa.gov.

(2) *Exceptions*—(i) *VMS onboard*. The operator of a catcher/processor or mothership is not required to submit to NMFS a check-in report or check-out report if the vessel is carrying onboard a transmitting VMS that meets the requirements of § 679.28(f).

(ii) *Two adjacent reporting areas*. If on the same day a catcher/processor intends to fish in two adjacent reporting areas (an action which would require submittal of check-out reports and check-in reports multiple times a day when crossing back and forth across a reporting area boundary), and the two reporting areas have on that day and time an identical fishing status for every species, the operator must:

(A) Submit to NMFS a check-in report to the first area prior to entering the first reporting area, and

(B) Submit to NMFS a check-in report to the second area prior to entering the second reporting area.

(C) Remain within 10 nautical miles (18.5 km) of the boundary described in paragraph (h)(2)(i) of this section.

(D) If the catcher/processor proceeds in the second reporting area beyond 10 nautical miles (18.5 km) of the boundary between the two areas, the operator must submit a check-out report from the first reporting area. The operator must submit a check-out report from the second area upon exiting that reporting area.

(3) *Transit through reporting areas*. The operator of a catcher/processor or mothership is not required to submit a check-in or check-out report if the vessel is transiting through a reporting area and is not fishing or receiving fish.

(4) *Time limits and submittal*. Except as indicated in paragraph (h)(2) of this section, the operator or manager must submit a check-in report and a check-out report according to the following table:

For ...	If you are a ...	Submit a BEGIN message	Submit a CEASE message
(i) Each reporting area, except area 300, 400, 550, or 690	(A) C/P using trawl gear	Before gear deployment.	Within 24 hours after departing a reporting area but prior to checking in to another reporting area.
	(B) C/P using longline or pot gear	Before gear deployment. May be checked in to more than one area simultaneously.	Upon completion of gear retrieval and within 24 hours after departing each reporting area.

For ...	If you are a ...	Submit a BEGIN message	Submit a CEASE message
	(C) MS	Before receiving groundfish, must check-in to reporting area(s) where groundfish were harvested. May be checked in to more than one area simultaneously.	Within 24 hours after receipt of fish is complete from that reporting area. If receipt of groundfish from a reporting area is expected to stop for at least one month during the fishing year and then start up again, may submit check-out report for that reporting area.
(ii) COBLZ or RKCSA	(A) C/P using trawl gear	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.	Upon completion of gear retrieval for groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
	(B) MS	Before receiving groundfish harvested with trawl gear that were harvested in the COBLZ or RKCSA, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.	Upon completion of groundfish receipt, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
(iii) Gear Type	(A) C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.	Upon completion of gear retrieval for groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
	(B) MS	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
(iv) CDQ	(A) MS	Prior to receiving groundfish CDQ, if receiving groundfish under more than one CDQ number, use a separate check-in for each CDQ number.	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ number.
	(B) C/P	Prior to fishing, submit a separate check-in for each CDQ number.	Within 24 hours after groundfish CDQ fishing for each CDQ number has ceased.
(v) Exempted or Research Fishery	(A) C/P	Prior to fishing, submit a separate check-in for each type.	Upon completion of receipt of groundfish submit a separate check-out for each type for which a check-in was submitted.
	(B) MS	Prior to receiving groundfish, submit a separate check-in for each type.	Upon completion of receipt of groundfish submit a separate check-out for each type for which a check-in was submitted.
(vi) Aleutian Islands Pollock (AIP)	(A) C/P	Prior to AIP fishing.	Within 24 hours after completion of gear retrieval for AIP.
	(B) MS	Before receiving AIP.	Within 24 hours after receipt of AIP has ceased.
(vii) Processor Type	C/P, MS	If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.	Upon completion of simultaneous activity as both catcher/processor and mothership, a separate check-out, one for catcher/processor and one for mothership.

For ...	If you are a ...	Submit a BEGIN message	Submit a CEASE message
(viii) Change of fishing year	(A) C/P, MS	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.	If a check-out report was not previously submitted during a fishing year for a reporting area, submit a check-out report for each reporting area on December 31.
	(B) SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in to start the year on January 1.	If a check-out report was not previously submitted during a fishing year, submit a check-out report on December 31.
(ix) Interruption of production	SS, SFP, MS	n/a	If receipt of groundfish is expected to stop for at least one month during the fishing year and then start up again, the manager or operator may choose to submit a check-out report.

(5) *Required information.* The operator of a catcher/processor or mothership and the manager of a

shoreside processor or SFP must record the information in the following table

on a check-in report and a check-out report, as appropriate.

Required information	Check-in Report			Check-out Report		
	MS	C/P	SS, SFP	MS	C/P	SS, SFP
(i) Whether an original or revised report	X	X	X	X	X	X
(ii) Vessel name, ADF&G processor code, FFP number	X	X		X	X	
(iii) Processor name, ADF&G processor code, FFP number			X			X
(iv) Representative name, business telephone number, business fax number	X	X	X	X	X	X
(v) COMSAT number (if applicable)	X	X		X	X	
(vi) Management program name (see paragraph (a)(1)(iii) of this section) and identifying number (if any). If harvest is not under one of these management programs, leave blank.	X	X		X	X	
(vii) Processor type, gear type	X	X		X	X	
(viii) Date (mm/dd/yyyy) and time (A.I.t., military format)						
(A) When receipt of groundfish will begin	X		X			
(B) When gear deployment will begin		X				
(C) When the last receipt or processing of groundfish was completed				X		X
(D) When the vessel departed the reporting area					X	
(ix) Position coordinates						
(A) Where groundfish receipt begins	X					
(B) Where receiving groundfish (if SFP):			X			
(C) Where gear is deployed		X				
(D) Where the last receipt of groundfish was completed				X		
(E) Where the vessel departed the reporting area					X	

Required information	Check-in Report			Check-out Report		
	MS	C/P	SS, SFP	MS	C/P	SS, SFP
(x) Reporting area code						
(A) Where gear deployment begins		X				
(B) Where groundfish harvest occurred	X					
(C) Where the last receipt of groundfish was completed				X		
(D) Where the vessel departed the reporting area					X	
(xi) Primary and secondary target species (A change in intended target species within the same reporting area does not require a new BEGIN message.)						
(A) Expected to be received the following week	X					
(B) Expected to be harvested the following week		X				
(xii) Indicate (YES or NO) whether this is a check-in report			X			
(xiii) If YES, indicate						
(A) If checking-in for the first time this fishing year			X			
(B) If checking-in to restart receipt and processing of groundfish after filing a check-out report			X			
(xiv) Indicate (YES or NO) whether this is a check-out report						X
(xv) If YES, indicate product weight of all fish or fish products (including non groundfish) remaining at the facility (other than public cold storage) by species code and product code. Indicate if recorded to the nearest pound or to the nearest 0.001 mt.			X			X

(i) *Weekly production report (WPR)*. The WPR is removed from use. Instead of a WPR, the operator of a mothership or catcher/processor and the manager of a shoreside processor or SFP must submit all landings information, production information, and discard and disposition information using eLandings or other NMFS-approved software (see paragraph (e) of this section).

* * * * *

(l) * * *

(1) * * *

(iv) *Exemption*—(A) *Halibut*. An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.40(h) and concurrent with a legal landing of salmon harvested using hand troll gear or power troll gear is exempt from the PNOL required by this section.

(B) *Lingcod*. An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.40(h) and concurrent with a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.

(2) *IFQ landing*—(i) *Remain at landing site*. Once the landing has commenced, the IFQ permit holder, the IFQ hired master permit holder, or the CDQ hired master permit holder, and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish, or CDQ halibut account is properly debited (see § 679.40(h)).

(ii) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish*. The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is completed through eLandings or other NMFS-approved software and the IFQ permit holder's or CDQ permit holder's account is properly debited (see § 679.40(h)).

(iii) *Single offload site*—(A) *IFQ halibut and CDQ halibut*. The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut onboard the vessel.

(B) *IFQ sablefish*. The vessel operator who lands IFQ sablefish must continuously and completely offload at

a single offload site all sablefish onboard the vessel.

* * * * *

■ 7. In § 679.7, paragraph (a)(1)(iii) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(iii) Conduct fishing operations from a vessel using other than the operation type(s) specified on the FFP (see § 679.4(b)) issued for that vessel.

* * * * *

■ 8. In § 679.22, paragraph (b)(6) that was revised on June 1, 2006 (71 FR 31107) effective July 3, 2006 through December 31, 2010, is removed and reserved, and paragraphs (b)(5)(i) and (ii) are revised to read as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(5) * * *

(i) No FFP holder may fish for groundfish in the Sitka Pinnacles

Marine Reserve, and no vessel named on an FFP may be anchored in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No person fishing under an IFQ halibut permit may fish for halibut and no person fishing under an IFQ sablefish permit may fish for sablefish in the Sitka Pinnacles Marine Reserve; and no vessel with an IFQ permit holder or IFQ hired master permit holder onboard may be anchored in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

* * * * *

■ 9. In § 679.28:

■ A. Paragraph (b)(2)(v) is removed and reserved.

■ B. Paragraphs (f)(4)(iii) and (h) are added.

■ C. Paragraphs (a), (b)(2)(iii), (b)(2)(iv), (b)(2)(vi)(A), (f)(4)(i), (f)(4)(ii), and (f)(5) are revised.

The revisions and additions read as follows:

§ 679.28 Equipment and operational requirements.

(a) *Applicability.* This section contains the operational requirements for scales, observer sampling stations, bins for volumetric estimates, vessel monitoring system hardware, catch monitoring and control plan, and catcher vessel electronic logbook software. The operator or manager must retain a copy of all records described in this section (§ 679.28) as indicated at § 679.5(a)(5) and (6) and make available the records upon request of NMFS observers and authorized officers as indicated at § 679.5(a)(5).

(b) * * *

(2) * * *

(iii) *Who may perform scale inspections and approvals?* Scales must be inspected and approved by a NMFS-staff scale inspector or an inspector designated by NMFS and trained by a NMFS-staff scale inspector.

(iv) *How does a vessel owner arrange for a scale inspection?* The operator must submit a request for a scale inspection at least 10 working days in advance of the requested date of inspection by filing a request online or by printing and faxing the scale inspection request at <http://alaskafisheries.noaa.gov/scales/default.htm>.

* * * * *

(vi) * * *

(A) Make the vessel and scale available for inspection by the scale inspector.

* * * * *

(f) * * *

(4) * * *

(i) Register the vessel's VMS unit with an appropriate service provider;

(ii) Use VMS check-in report to contact OLE by fax at 907-586-7703 and provide the date (mm/dd/yyyy), vessel name, USCG documentation number, FFP number or Federal crab vessel permit number, name and telephone number of contact person, and VMS transmitter ID or serial number; and

(iii) Call OLE at 907-586-7225, Monday through Friday, between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t., at least 72 hours before leaving port and receive confirmation that the transmissions are being received.

(5) *What must the vessel owner do when the vessel replaces a VMS transmitter?* A vessel owner who must use a VMS and who intends to replace a transmitter, must follow the reporting and confirmation procedure for the replacement transmitter, as described in paragraph (f)(4) of this section.

* * * * *

(h) *ELB software*—(1) *How do I get my ELB software approved by NMFS?*—(i) *Specifications.* NMFS will provide specifications for ELB software upon request. Interested parties may contact NMFS by mail at NMFS Alaska Region, Sustainable Fisheries Division, Catch Accounting/Data Quality, P.O. Box 21668, Juneau, AK 99802-1668; by telephone at 907-586-7228. The four types of ELB software are:

(A) Catcher vessel longline or pot gear (see § 679.5(c)(3));

(B) Catcher/processor longline or pot gear (see § 679.5(c)(3));

(C) Catcher vessel trawl gear (see § 679.5(c)(4)); and

(D) Catcher/processor trawl gear (see § 679.5(c)(4)).

(ii) *ELB submittal package.* A vendor or developer wishing to have an ELB approved by NMFS must submit:

(A) A fully operational test copy of the software; and

(B) An application for ELB-approval giving the following information (see paragraphs (h)(1)(ii)(B)(1) through (3) of this section):

(1) Company, contact person, address, telephone number, and fax number for the company developing the software;

(2) Name and type of software; and

(3) Printed name and signature of individual submitting the software for approval.

(C) Copies of all manuals and documentation for the software.

(iii) *ELB approval.* NMFS will approve ELB software within 60 working days of receipt of all required information if the software meets the

following standards in paragraphs (h)(1)(iii)(A) through (H) of this section):

(A) Has fields for the entry of all information required for a paper DFL or DCPL as described in § 679.5(c)(3) and (4), as appropriate.

(B) The software must automatically time and date stamp each printed copy of the ELB logsheet and ELB discard report and clearly identify the first printed copy as an original. If any changes are made to the data in the ELB, subsequent printed copies must clearly be identified as revised. The software must be designed to prevent the operator from overriding this feature.

(C) The software must export data as an ASCII comma delimited text file, xml file, or other format approved by NMFS.

(D) The software must integrate with the vessel's global positioning system (GPS) to allow vessel location fields to be completed automatically.

(E) When the software is started, it must clearly show the software version number.

(F) The software must be designed to facilitate the transfer of an export file to NMFS as an email attachment.

(G) The software must be designed to ensure that an operator can comply with the requirements for ELB use as described in § 679.5(f).

(H) The software must include sufficient data validation capability to prevent a submitter from accidentally transmitting a data file or printing an ELB logsheet that is incomplete or contains clearly erroneous data.

(2) *What if I need to make changes to NMFS-approved ELB software?*—(i) *NMFS-instigated changes.* NMFS will provide the developer with information that affects the ELB software as soon as it is available for distribution, e.g., changes in species codes or product codes.

(ii) *Developer-instigated changes.* The developer must submit a copy of the changed software along with documentation describing the need for the change to NMFS for review and approval as described in paragraph (h)(1)(ii) of this section. NMFS will review and approve the new version according to the guidelines set forth in paragraph (h)(1)(iii) of this section.

(iii) *NMFS-approved ELB changes.* If changes to ELB software are approved by NMFS, the developer must:

(A) Give the revised software a new version number;

(B) Notify all known ELB users of the software that a new version is available; and

(C) Ensure that the ELB users are provided with a revised copy within 15 days of notification.

* * * * *

■ 10. In § 679.40, paragraph (c)(3) is revised and paragraph (h) is added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * *

(c) * * *

(3) *IFQ permit.* The Regional Administrator shall issue to each QS holder, pursuant to § 679.4, an IFQ permit specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category. Such IFQ permits will be sent to each QS holder at the address on record for that person prior to the start of the IFQ fishing season or to any IFQ holder(s) following transfers or penalties (15 CFR part 904).

* * * *

(h) *Properly debited landing—(1) Permit holder's account.* Except as provided in paragraph (g) of this section, all IFQ halibut, CDQ halibut, and IFQ sablefish catch onboard a vessel must be weighed and debited from the IFQ permit holder's account or CDQ halibut permit holder's account under which the catch was harvested.

(2) *Properly debited account.* A properly concluded groundfish IFQ landing receipt, crab IFQ landing receipt, or a manual IFQ landing report which is signed by the Registered Buyer and IFQ permit holder or IFQ hired master permit holder or CDQ hired master permit holder constitutes confirmation that the IFQ permit holder's or CDQ permit holder's account is properly debited.

(3) *Source of debit.* NMFS shall use the following sources (see paragraphs (h)(3)(i) and (ii) of this section) of information to debit a CDQ halibut, IFQ halibut, or IFQ sablefish account:

(i) *Unprocessed landing.* If offload of unprocessed IFQ halibut, CDQ halibut, or IFQ sablefish from a vessel, the scale weight (to the nearest pound) of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(e)(7)(i)(E)(6) to be included in the IFQ Landing Report.

(ii) *Processed landing.* If offload of processed IFQ halibut, CDQ halibut, or IFQ sablefish from a vessel, the scale weight (to the nearest pound) of the halibut or sablefish processed product actually measured at or before the time of offload. If the product scale weights are taken before the time of offload, then the species and actual product weight of each box or container must be visibly marked on the outside of each container to facilitate inspection by OLE or designees.

■ 11. In § 679.42, paragraphs (c), (h)(3), and (j)(8) are revised and paragraph (h)(4) is added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * *

(c) *Requirements and deductions.* Any individual who harvests halibut or sablefish with fixed gear must have a valid IFQ permit, and if a hired master is conducting the harvest, a valid IFQ hired master permit, aboard the vessel at all times during the fishing trip and present during the landing.

* * * *

(h) * * *

(3) *Excess.* An IFQ permit holder who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all that IFQ with a single vessel. However, two or more IFQ permit holders may not catch and retain their IFQs with one vessel in excess of these limitations.

(4) *Liability.* Owners and operators of vessels exceeding these limitations are jointly and severally liable with IFQ permit holders and IFQ hired master permit holders whose harvesting causes the vessel to exceed these limitations.

* * * *

(j) * * *

(8) A corporation, partnership, or other non-individual entity, except for a publicly held corporation, that receives an allocation of QS must provide annual updates to the Regional Administrator identifying all current shareholders, partners, or members to the individual person level and affirming the entity's continuing existence as a corporation or partnership, or other non-individual entity.

* * * *

■ 12. In § 679.50, paragraph (g)(1)(ix)(A) is revised to read as follows:

§ 679.50 Groundfish Observer Program.

* * * *

(g) * * *

(1) * * *

(ix) * * *

(A) Ensure that transfers of observers at sea are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

* * * *

§§ 679.1, 679.2, 679.4, 679.5, 679.20, 679.21, 679.22, 679.27, 679.28, 679.40, 679.41, 679.42, 679.50, 679.61, and 679.84 [Amended]

■ 13. At each of the locations shown in the Location column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.1 introductory text	under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act	under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 <i>et seq.</i> (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act)	1
§ 679.1(a)(2)	5 AAC 28.110	5 AAC 28.111	1
§ 679.2 definition of "Authorized distributor"	food bank distributors	food bank distributors (see § 679.26, Prohibited Species Donation Program)	1
§ 679.2 definition of "Authorized fishing gear" paragraph (14)(iii) introductory text	paragraph (10)(ix)	paragraph (14)(ix)	1
§ 679.2 definition of "Authorized fishing gear" paragraph (14)(iv)	paragraph (10)(iii)	paragraph (14)(iii)	1

Location	Remove	Add	Frequency
§ 679.2 definition of "Authorized fishing gear" paragraph (14)(v)	paragraphs (10)(iii) and (iv)	paragraphs (14)(iii) and (iv)	1
§ 679.2 definition of "Basis species"	authorized to harvest	authorized to harvest (see Tables 10 and 11 to this part)	1
§ 679.2 definition of "Catcher/processor" introductory text	<i>Catcher/processor</i> means:	<i>Catcher/processor (C/P)</i> means:	1
§ 679.2 definition of "Catcher vessel"	<i>Catcher vessel</i> means	<i>Catcher vessel (CV)</i> means	1
§ 679.2 definition of "Legal rockfish landing for purposes of qualifying for the Rockfish Program" paragraph (2)(i)	Weekly Production Report	production report	1
§ 679.2 definition of "Person"	other entity	other non-individual entity	1
§ 679.2 definition of "Prohibited species"	regulated under this part	issued an FFP under § 679.4(b)	1
§ 679.2 definition of "Stationary floating processor"	<i>Stationary floating processor</i>	<i>Stationary floating processor (SFP)</i>	1
§ 679.2 definition of "U.S. Citizen" paragraph (2)(ii)	other entity	other non-individual entity	1
§ 679.2 definition of "Vessel operations category"	§ 679.5(b)(3)	§ 679.4(b)(3)	1
§ 679.2 definition of "Weekly production report (WPR)"	(see § 679.5(i))	is no longer required (see § 679.5(e)(9) and (10))	1
§ 679.4(b)(5)(ii)	owner; and the name	owner; and if applicable, the name	1
§ 679.4(b)(5)(iii)	horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.	horsepower; and whether this is a vessel of the United States.	1
§ 679.4(d)(1)(i), (d)(2)(i), (d)(3)(i), and (d)(3)(iv)	suspended, or modified	suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified	1
§ 679.4(k) heading	<i>Licenses for license limitation groundfish or crab species</i>	<i>Licenses for license limitation program (LLP) groundfish or crab species</i>	1
§ 679.4(k)(3)(ii)(A)(3) and (k)(4) introductory text	Weekly Production Reports	production reports	1
§ 679.4(k)(5)(iv)	Pacific time	Alaska local time	1
§ 679.5(g)(1)(i) heading	<i>Groundfish.</i>	<i>Groundfish and donated prohibited species.</i>	1
§ 679.5(p)(2)	Alaska Department of Fish & Game, Division of Commercial Fisheries	ADF&G Division of Commercial Fisheries	1
§ 679.5(r)(3)	SPELR	eLandings	2
§ 679.5(r)(5) heading	<i>Weekly production report (WPR).</i>	<i>Production reports.</i>	1
§ 679.5(r)(5)	submit a WPR as described in paragraph (i) of this section	submit a production report as described in paragraphs (e)(9) and (10) of this section	1
§ 679.5(r)(10)(i)(B)(2)	as reported in a WPR	as reported in a production report	1

Location	Remove	Add	Frequency
§ 679.20(e) heading	<i>Maximum retainable amounts—</i>	<i>Maximum retainable amounts (MRA)—</i>	1
§ 679.20(g)(2)(iii)	§ 679.5(a)(9)	§ 679.5(a)(7)(v)(C)	1
§ 679.21(a)(2)	motherships and shoreside processors	motherships, shoreside processors, and SFPs	1
§ 679.21(e)(7)(vii)	during August	during the period August	1
§ 679.22(b)(1)(iii)	open to any trawl other than a pelagic trawl gear year round.	open unless otherwise closed to trawling.	1
§ 679.27(j)(2)	weekly production report required at § 679.5(i)	production report required at § 679.5(e)(10)	1
§ 679.28(c)(3)(i)	§ 679.5(a)(13)	§ 679.5(a)(5)(ii)	1
§ 679.40(a)(2)(i)(D)	other entity	other non-individual entity	1
§ 679.40(a)(3)(v)(B)	WPRs	production reports	1
§ 679.40(a)(6)(i)	corporation or partnership	corporation, partnership, or other non-individual entity	2
§ 679.41(d)(2)(ii)	A corporation, partnership, or other entity.	A corporation, partnership, or other non-individual entity.	1
§ 679.42(j) heading	<i>corporations and partnerships</i>	<i>corporations, partnerships, or other non-individual entities</i>	1
§ 679.42(j)	corporation, partnership, or other entity	corporation, partnership, association, or other non-individual entity	13
§ 679.42(j)	corporation or partnership	corporation, partnership, association, or other non individual entity	10
§ 679.50(c)(3)(i)	weekly production report submitted to the Regional Administrator under § 679.5(i).	production report submitted to the Regional Administrator under § 679.5(e)(10).	1
§ 679.50(c)(3)(ii)	weekly production report submitted to the Regional Administrator for that week by the mothership under § 679.5(i).	production reports submitted to the Regional Administrator under § 679.5(e)(10).	1
§ 679.61(d)(1)	paragraph (c) of this section	this paragraph (d)	1
§ 679.61(e)(1)	paragraph (c) of this section	this paragraph (e)	1
§ 679.84(b)	§ 679.4(m)	§ 679.4(n)	1

■ 14. The map in Figure 3 to part 679 is revised to read as follows:

BILLING CODE 3510-22-S

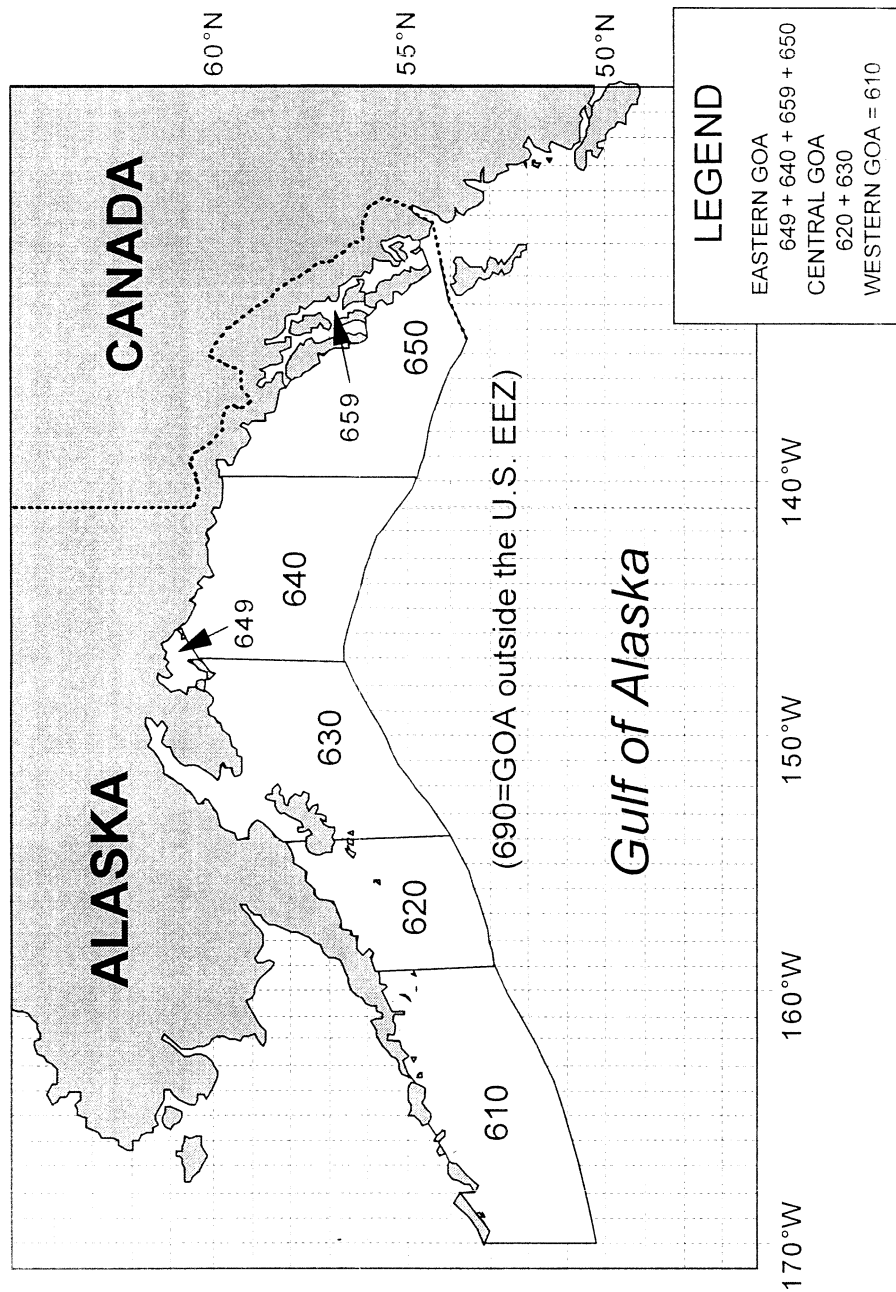


Figure 3 to Part 679—Gulf of Alaska statistical and reporting areas
a. Map

* * * * *

■ 15. The heading for Figure 5 to part 679 and the map are revised to read as follows:

Figure 5 to Part 679—Kodiak Island Closure Status for Vessels Using Non-pelagic Trawl Gear

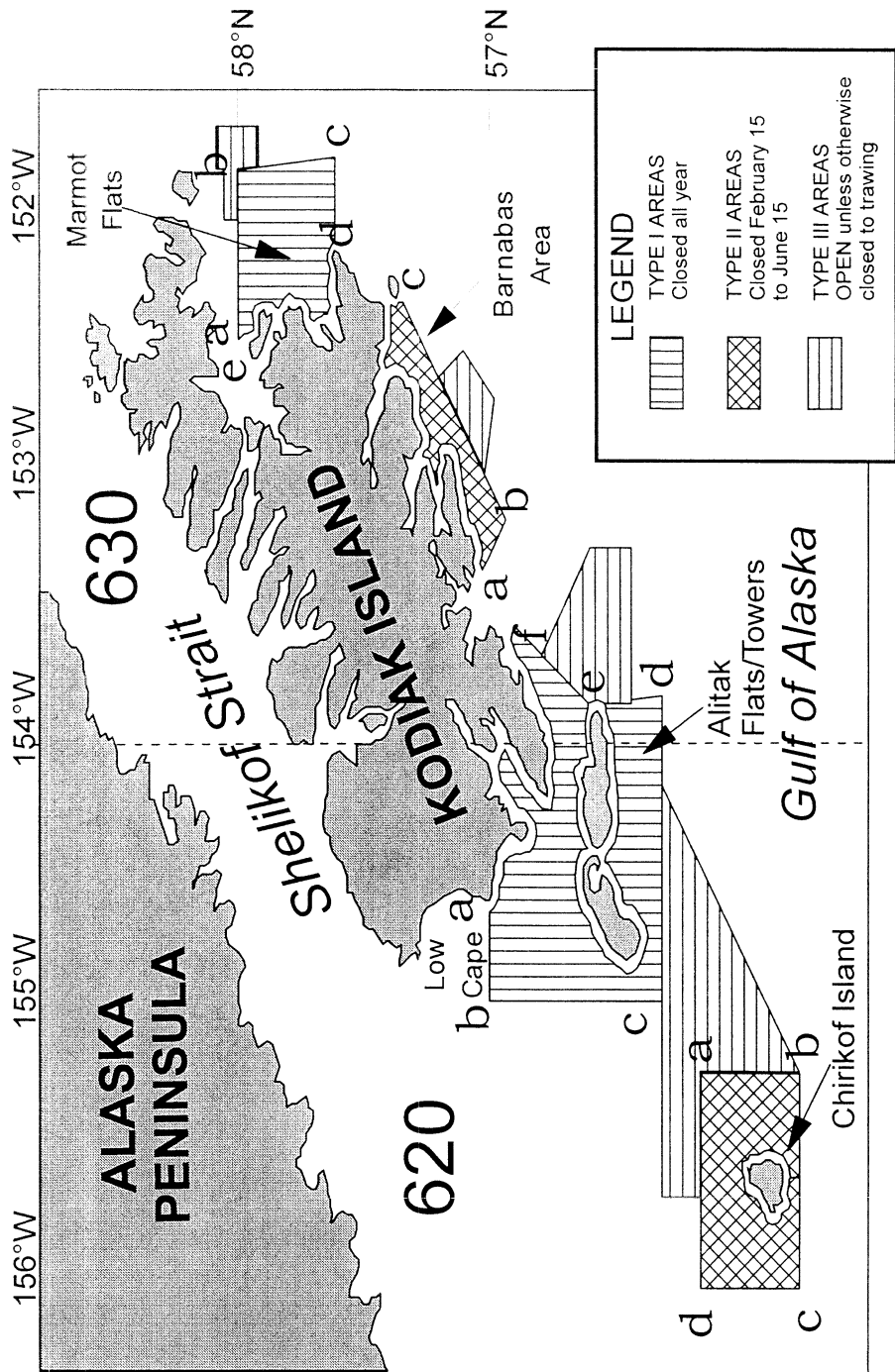


Figure 5 to Part 679— Kodiak Island Closure Status for Vessels Using Non-pelagic Trawl Gear (see § 679.22(b)(1))
a. Map

* * * * *

■ 16. Figure 7 to part 679 is revised to read as follows:

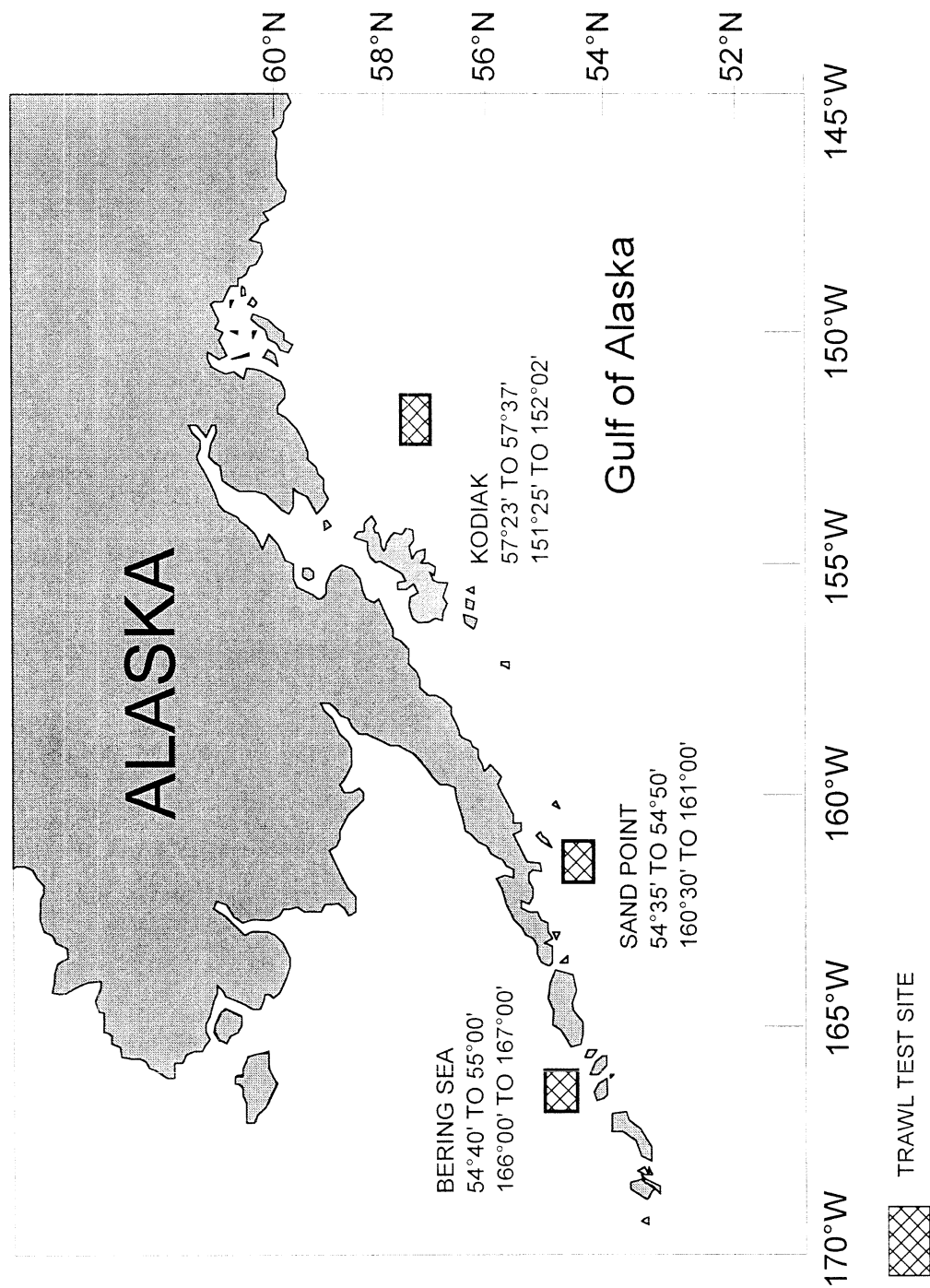


Figure 7 to Part 679--Location of Trawl Gear Test Areas in the GOA and the BSAI (see § 679.24(d)(4))

■ 17. Figure 12 to part 679 and its heading are revised to read as follows:

Figure 12 to Part 679—Bristol Bay Trawl Closure Area

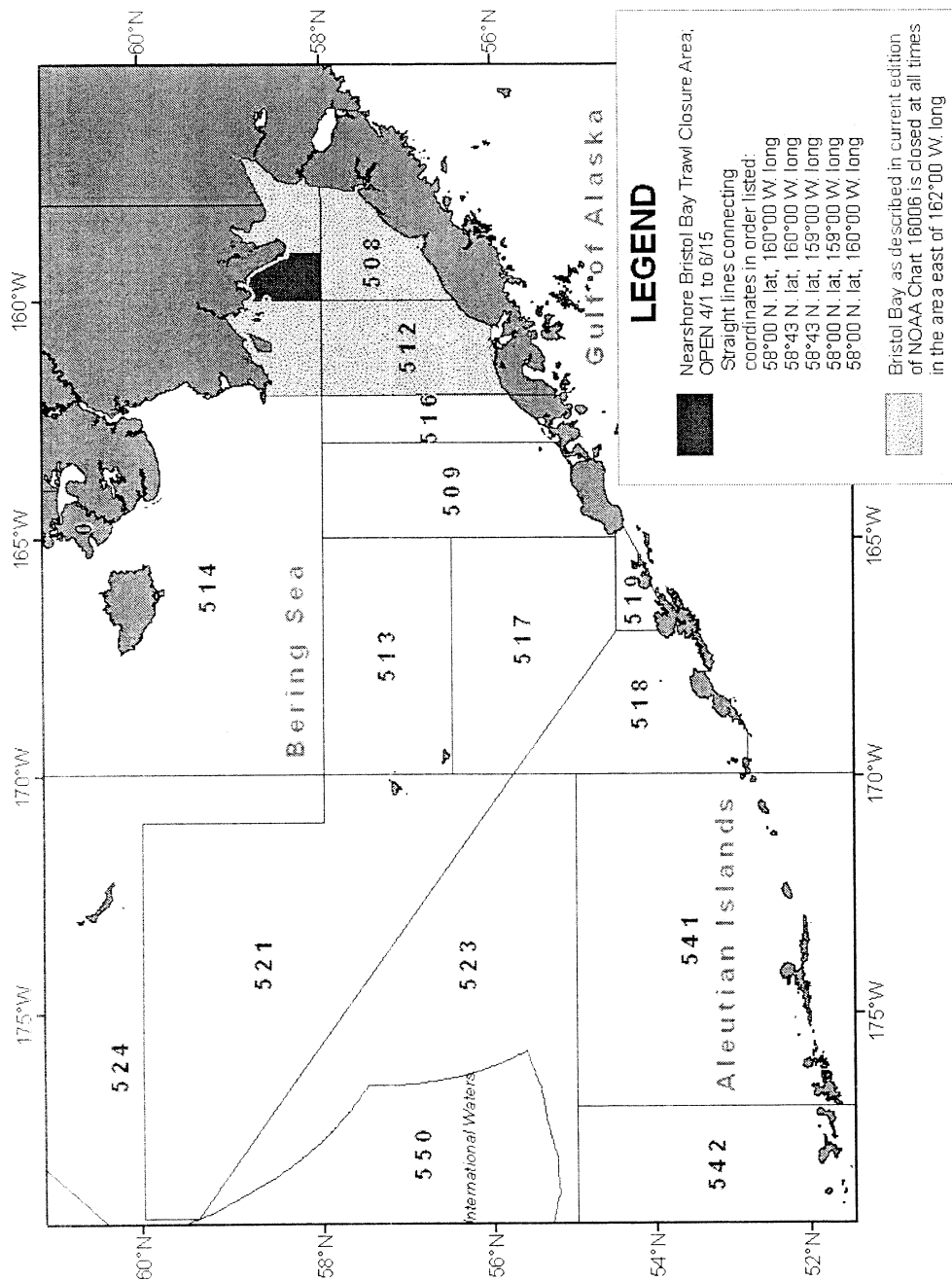


Figure 12 to Part 679—Bristol Bay Trawl Closure Area (see 679.22(a)(9))

BILLING CODE 3510-22-C

■ 18. Table 1 to part 679 is removed; Tables 1a, 1b, and 1c to part 679 are added; and Tables 2a and 2b to part 679 are revised to read as follows:

TABLE 1A TO PART 679—DELIVERY CONDITION AND PRODUCT CODES
GENERAL USE CODES

Description	Code
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head (ancillary only).	19

TABLE 1A TO PART 679—DELIVERY CONDITION AND PRODUCT CODES—Continued

GENERAL USE CODES

Description	Code
Bled only. Throat or isthmus slit to allow blood to drain.	03
Bled fish destined for fish meal (includes offsite production). DO NOT RECORD ON PTR.	42
Bones (if meal, report as 32) (ancillary only).	39

TABLE 1A TO PART 679—DELIVERY CONDITION AND PRODUCT CODES—Continued

GENERAL USE CODES

Description	Code
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.	37
Cheeks. Muscles on sides of head (ancillary only).	17

TABLE 1A TO PART 679—DELIVERY
CONDITION AND PRODUCT CODES—
Continued

GENERAL USE CODES

Description	Code
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only).	18
Filletts, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin filletts.	24
Filletts, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.	23
Filletts with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.	22
Filletts with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.	20
Filletts with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.	21
Fish meal. Meal from whole fish or fish parts; includes bone meal.	32
Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard.	33
Gutted, head on. Belly slit and viscera removed.	04
Gutted, head off. Belly slit and viscera removed.	05
Head and gutted, with roe.	06
Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.	10

TABLE 1A TO PART 679—DELIVERY
CONDITION AND PRODUCT CODES—
Continued

GENERAL USE CODES

Description	Code
Heads. Heads only, regardless where severed from body (ancillary only).	16
Kirimi (Steak). Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.	11
Mantles, octopus or squid. Flesh after removal of viscera and arms.	36
Milt (in sacs, or testes) (ancillary only).	34
Minced. Ground flesh.	31
Other retained product. If product is not listed on this table, enter code 97 and write a description and product recovery rate next to it in parentheses.	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh.	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only).	14
Salted and split. Head removed, belly slit, viscera removed, filletts cut from head to tail but remaining attached near tail. Product salted.	12
Stomachs. Includes all internal organs (ancillary only).	35
Surimi. Paste from fish flesh and additives.	30
Whole fish or shellfish/food fish.	01
Wings. On skates, side fins are cut off next to body.	13
SHELLFISH ONLY	
Soft shell crab	75
Bitter crab	76
Deadloss	79
Sections	80
Meat	81

NOTE: When using whole fish codes, record round weights not product weights, even if the whole fish is not used.

TABLE 1B TO PART 679—DISCARD
AND DISPOSITION CODES

Description	Code
Confiscation.	63
Deadloss (crab only).	79
Halibut retained for future sale (Halibut only).	87
Overage (Specify overage type in comment).	62
Tagged Fish (Exempt from IFQ).	64
Whole fish/bait, not sold. Used as bait on board vessel.	92
Whole fish/bait, sold.	61
Whole fish/discard at sea. Whole groundfish and prohibited species discarded by catcher vessels, catcher/processors, motherships, or tenders. DO NOT RECORD ON PTR.	98
Whole fish/discard, damaged. Whole fish damaged by observer's sampling procedures.	93
Whole fish/discard, decomposed. Decomposed or previously discarded fish.	89
Whole fish/discard, infested. Flea-infested fish, parasite-infested fish.	88
Whole fish/discard, onshore. Discard after delivery and before processing by shoreside processors, stationary floating processors, and buying stations and in-plant discard of whole groundfish and prohibited species during processing. DO NOT RECORD ON PTR.	99
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded that is donated to charity under a NMFS-authorized program.	86
Whole fish/fish meal. Whole fish destined for meal (includes offsite production.) DO NOT RECORD ON PTR.	41
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait.	95

TABLE 1B TO PART 679—DISCARD AND DISPOSITION CODES—Continued

Description	Code
Whole fish/sold, for human consumption.	60

NOTE: When using whole fish codes, record round weights not product weights, even if the whole fish is not used.

TABLE 1C TO PART 679—PRODUCT TYPE CODES

Description	Code
Ancillary product. A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.	A
Primary product. A product, such as fillets, made from each fish, with the highest recovery rate.	P
Reprocessed or rehandled product. A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product.	R

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUND FISH

Species Description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
ROCKFISH	

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUND FISH—Continued

Species Description	Code
Aurora (<i>Sebastes aurora</i>)	185
Black (BSAI) (<i>S. melanops</i>)	142
Blackgill (<i>S. melanostomus</i>)	177
Blue (BSAI) (<i>S. mystinus</i>)	167
Bocaccio (<i>S. paucispinis</i>)	137
Canary (<i>S. pinniger</i>)	146
Chilipepper (<i>S. goodei</i>)	178
China (<i>S. nebulosus</i>)	149
Copper (<i>S. caurinus</i>)	138
Darkblotched (<i>S. crameri</i>)	159
Dusky (<i>S. ciliatus</i>)	154
Greenstriped (<i>S. elongatus</i>)	135
Harlequin (<i>S. variegatus</i>)	176
Northern (<i>S. polyspinis</i>)	136
Pacific Ocean perch (<i>S. alutus</i>)	141
Pygmy (<i>S. wilsoni</i>)	179
Quillback (<i>S. maliger</i>)	147
Redbanded (<i>S. babcocki</i>)	153
Redstripe (<i>S. proriger</i>)	158
Rosethorn (<i>S. helvomaculatus</i>)	150
Rougheye (<i>S. aleutianus</i>)	151
Sharpchin (<i>S. zacentrus</i>)	166
Shortbelly (<i>S. jordanii</i>)	181
Shortraker (<i>S. borealis</i>)	152
Silvergray (<i>S. brevispinis</i>)	157
Splitnose (<i>S. diploproa</i>)	182
Stripetail (<i>S. saxicola</i>)	183
Thornyhead (all <i>Sebastolobus</i> species)	143

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUND FISH—Continued

Species Description	Code
Tiger (<i>S. nigrocinctus</i>)	148
Vermilion (<i>S. miniatus</i>)	184
Widow (<i>S. entomelas</i>)	156
Yelloweye (<i>S. ruberrimus</i>)	145
Yellowmouth (<i>S. reedi</i>)	175
Yellowtail (<i>S. flavidus</i>)	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS	
Other (if salmon, spiny dogfish or Pacific sleeper shark — use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES	
Big	702
Longnose	701
Other (If longnose or big skate — use specific species code)	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrals	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

TABLE 2B TO PART 679—SPECIES CODES: FMP PROHIBITED SPECIES AND CR CRAB

Species Description	Code	CR Crab	Ground-fish PSC
CRAB			

TABLE 2B TO PART 679—SPECIES CODES: FMP PROHIBITED SPECIES AND CR CRAB—Continued

	Box	<i>Lopholithodes mandtii</i>	900		✓
	Dungeness	<i>Cancer magister</i>	910		✓
	King, blue	<i>Paralithodes platypus</i>	922	✓	✓
	King, golden (brown)	<i>Lithodes aequispinus</i>	923	✓	✓
	King, red	<i>Paralithodes camtschaticus</i>	921	✓	✓
	King, scarlet (deepsea)	<i>Lithodes couesi</i>	924		✓
	Korean horsehair crab	<i>Erimacrus isenbeckii</i>	940		✓
	Multispinus crab	<i>Paralomis multispinus</i>	951		✓
	Tanner, Bairdi	<i>Chionoecetes bairdi</i>	931	✓	✓
	Tanner, grooved	<i>Chionoecetes tanneri</i>	933		✓
	Tanner, snow	<i>Chionoecetes opilio</i>	932	✓	✓
	Tanner, triangle	<i>Chionoecetes angulatus</i>	934		✓
	Verrilli crab	<i>Paralomis verrilli</i>	953		✓
PACIFIC HALIBUT		<i>Hippoglossus stenolepis</i>	200		✓
PACIFIC HERRING		Family Clupeidae	235		✓
SALMON					
	Chinook (king)	<i>Oncorhynchus tshawytscha</i>	410		✓
	Chum (dog)	<i>Oncorhynchus keta</i>	450		✓
	Coho (silver)	<i>Oncorhynchus kisutch</i>	430		✓
	Pink (humpback)	<i>Oncorhynchus gorbuscha</i>	440		✓
	Sockeye (red)	<i>Oncorhynchus nerka</i>	420		✓
STEELHEAD TROUT		<i>Oncorhynchus mykiss</i>	540		✓

* * * * *

■ 19. Table 2d to part 679 is revised to read as follows:

TABLE 2D TO PART 679—SPECIES CODES: NON-FMP SPECIES

GENERAL USE	
Species Description	Code
Arctic char (anadromous)	521
Bering flounder (<i>Hippoglossoides robustus</i>)	116
Dolly varden (anadromous)	531
Eels or eel-like fish	210
Eel, wolf	217
GREENLING	
Kelp	194
Rock	191

TABLE 2D TO PART 679—SPECIES CODES: NON-FMP SPECIES—Continued

GENERAL USE	
Species Description	Code
Whitespot	192
Grenadier, giant	214
Grenadier (rattail)	213
Jellyfish (unspecified)	625
Lamprey, Pacific	600
Lingcod	130
Lumpsucker	216
Pacific flatnose	260
Pacific hagfish	212
Pacific hake	112
Pacific lamprey	600

TABLE 2D TO PART 679—SPECIES CODES: NON-FMP SPECIES—Continued

GENERAL USE	
Species Description	Code
Pacific saury	220
Pacific tomcod	250
Poacher (Family Agonidae)	219
Prowfish	215
Ratfish	714
Rockfish, black (GOA)	142
Rockfish, blue (GOA)	167
Sardine, Pacific (pilchard)	170
Sea cucumber, red	895

TABLE 2D TO PART 679—SPECIES
CODES: NON-FMP SPECIES—Con-
tinued

GENERAL USE	
Species Description	Code
Shad	180
Skiffish	715
Snailfish, general (genus <i>Liparis</i> and genus <i>Careproctus</i>)	218
Sturgeon, general	680
Wrymouths	211
SHELLFISH	
Abalone, northern (pinto)	860
CLAMS	
Arctic surf	812
Cockle	820

TABLE 2D TO PART 679—SPECIES
CODES: NON-FMP SPECIES—Con-
tinued

GENERAL USE	
Species Description	Code
Eastern softshell	842
Pacific geoduck	815
Pacific littleneck	840
Pacific razor	830
Washington butter	810
Coral	899
Mussel, blue	855
Oyster, Pacific	880
Scallop, weathervane	850
Scallop, pink (or calico)	851

TABLE 2D TO PART 679—SPECIES
CODES: NON-FMP SPECIES—Con-
tinued

GENERAL USE	
Species Description	Code
SHRIMP	
Coonstripe	964
Humpy	963
Northern (pink)	961
Sidestripe	962
Spot	965
Snails	890
Urchin, green sea	893
Urchin, red sea	892

■ 20. Table 4 to part 679 is revised to read as follows:

TABLE 4 TO PART 679—STELLER SEA LION PROTECTION AREAS POLLOCK FISHERIES RESTRICTIONS

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to ¹		Pollock No-fish- ing Zones for Trawl Gear ^{2,8} (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63°04.00 N	168°51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63°18.00 N	171°26.00 W			20
Hall I.	Bering Sea	60°37.00 N	173°00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57°06.00 N	170°17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57°15.00 N	170°06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57°11.00 N	169°56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56°36.00 N	169°46.00 W			3
St. George I./S Rookery	Bering Sea	56°33.50 N	169°40.00 W			3
Cape Newenham	Bering Sea	58°39.00 N	162°10.50 W			20
Round (Walrus Islands)	Bering Sea	58°36.00 N	159°58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52°54.60 N	172°27.90 E	52°55.40 N	172°27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52°24.13 N	173°21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52°49.75 N	173°26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52°22.50 N	173°43.30 E	52°21.80 N	173°41.40 E	20
Alaid I.	Aleutian I.	52°46.50 N	173°51.50 E	52°45.00 N	173°56.50 E	20
Shemya I.	Aleutian I.	52°44.00 N	174°08.70 E			20
Buldir I.	Aleutian I.	52°20.25 N	175°54.03 E	52°20.38 N	175°53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51°52.50 N	177°12.70 E	51°53.50 N	177°12.00 E	20

TABLE 4 TO PART 679—STELLER SEA LION PROTECTION AREAS POLLOCK FISHERIES RESTRICTIONS—Continued

Kiska I./Sobaka & Vega	Aleutian I.	51°49.50 N	177°19.00 E	51°48.50 N	177°20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51°57.16 N	177°20.41 E	51°57.24 N	177°20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52°08.50 N	177°36.50 E			20
Tanadak I. (Kiska)	Aleutian I.	51°56.80 N	177°46.80 E			20
Segula I.	Aleutian I.	51°59.90 N	178°05.80 E	52°03.06 N	178°08.80 E	20
Ayugadak Point	Aleutian I.	51°45.36 N	178°24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51°49.98 N	178°12.35 E			20
Little Sitkin I.	Aleutian I.	51°59.30 N	178°29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51°32.32 N	178°49.28 E			20
Amchitka I./East Cape	Aleutian I.	51°22.26 N	179°27.93 E	51°22.00 N	179°27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51°24.46 N	179°24.21 E			20
Semisopchnoi/Petrel Pt.	Aleutian I.	52°01.40 N	179°36.90 E	52°01.50 N	179°39.00 E	20
Semisopchnoi I./Pochnoi Pt.	Aleutian I.	51°57.30 N	179°46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51°13.00 N	179°07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51°33.67 N	179°04.25 W	51°35.09 N	179°03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51°18.90 N	178°58.90 W	51°18.70 N	178°59.60 W	20
Kavalga I.	Aleutian I.	51°34.50 N	178°51.73 W	51°34.50 N	178°49.50 W	20
Tag I.	Aleutian I.	51°33.50 N	178°34.50 W			20
Ugidak I.	Aleutian I.	51°34.95 N	178°30.45 W			20
Gramp Rock	Aleutian I.	51°28.87 N	178°20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51°55.00 N	177°58.50 W	51°55.00 N	177°57.10 W	20
Bobrof I.	Aleutian I.	51°54.00 N	177°27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51°46.70 N	177°20.72 W			20
Kanaga I./North Cape	Aleutian I.	51°56.50 N	177°09.00 W			20
Adak I.	Aleutian I.	51°35.50 N	176°57.10 W	51°37.40 N	176°59.60 W	20
Little Tanaga Strait	Aleutian I.	51°49.09 N	176°13.90 W			20
Great Sitkin I.	Aleutian I.	52°06.00 N	176°10.50 W	52°06.60 N	176°07.00 W	20
Anagaksik I.	Aleutian I.	51°50.86 N	175°53.00 W			20
Kasatochi I.	Aleutian I.	52°11.11 N	175°31.00 W			20
Atka I./North Cape	Aleutian I.	52°24.20 N	174°17.80 W			20
Amlia I./Sviech. Harbor ¹¹	Aleutian I.	52°01.80 N	173°23.90 W			20
Sagigik I. ¹¹	Aleutian I.	52°00.50 N	173°09.30 W			20
Amlia I./East ¹¹	Aleutian I.	52°05.70 N	172°59.00 W	52°05.75 N	172°57.50 W	20
Tanadak I. (Amlia ¹¹)	Aleutian I.	52°04.20 N	172°57.60 W			20
Agligadak I. ¹¹	Aleutian I.	52°06.09 N	172°54.23 W			20
Seguam I./Saddleridge Pt. ¹¹	Aleutian I.	52°21.05 N	172°34.40 W	52°21.02 N	172°33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52°23.40 N	172°27.70 W	52°23.25 N	172°24.30 W	20
Seguam I./South Side	Aleutian I.	52°21.60 N	172°19.30 W	52°15.55 N	172°31.22 W	20

TABLE 4 TO PART 679—STELLER SEA LION PROTECTION AREAS POLLOCK FISHERIES RESTRICTIONS—Continued

Amukta I. & Rocks	Aleutian I.	52°27.25 N	171°17.90 W			20
Chagulak I.	Aleutian I.	52°34.00 N	171°10.50 W			20
Yunaska I.	Aleutian I.	52°41.40 N	170°36.35 W			20
Uliaga ³	Bering Sea	53°04.00 N	169°47.00 W	53°05.00 N	169°46.00 W	20,10
Chuginadak	Gulf of Alaska	52°46.70 N	169°41.90 W			20
Kagamii ³	Bering Sea	53°02.10 N	169°41.00 W			20,10
Samalga	Gulf of Alaska	52°46.00 N	169°15.00 W			20
Adugak I. ³	Bering Sea	52°54.70 N	169°10.50 W			10
Umnak I./Cape Aslik ³	Bering Sea	53°25.00 N	168°24.50 W			BA
Ogchul I.	Gulf of Alaska	52°59.71 N	168°24.24 W			20
Bogoslof I./Fire I. ³	Bering Sea	53°55.69 N	168°02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53°15.96 N	167°57.99 W			20
Emerald I.	Gulf of Alaska	53°17.50 N	167°51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53°13.64 N	167°39.37 W			20
Unalaska/Bishop Pt. ⁹	Bering Sea	53°58.40 N	166°57.50 W			10
Akutan I./Reef-Iava ⁹	Bering Sea	54°08.10 N	166°06.19 W	54°09.10 N	166°05.50 W	10
Unalaska I./Cape Sedanka ⁶	Gulf of Alaska	53°50.50 N	166°05.00 W			20
Old Man Rocks ⁶	Gulf of Alaska	53°52.20 N	166°04.90 W			20
Akutan I./Cape Morgan ⁶	Gulf of Alaska	54°03.39 N	165°59.65 W	54°03.70 N	166°03.68 W	20
Akun I./Billings Head ⁹	Bering Sea	54°17.62 N	165°32.06 W	54°17.57 N	165°31.71 W	10
Rootok ⁶	Gulf of Alaska	54°03.90 N	165°31.90 W	54°02.90 N	165°29.50 W	20
Tanginak I. ⁶	Gulf of Alaska	54°12.00 N	165°19.40 W			20
Tigalda/Rocks NE ⁶	Gulf of Alaska	54°09.60 N	164°59.00 W	54°09.12 N	164°57.18 W	20
Unimak/Cape Sarichef ⁹	Bering Sea	54°34.30 N	164°56.80 W			10
Aiktak ⁶	Gulf of Alaska	54°10.99 N	164°51.15 W			20
Ugamak I. ⁶	Gulf of Alaska	54°13.50 N	164°47.50 W	54°12.80 N	164°47.50 W	20
Round (GOA) ⁶	Gulf of Alaska	54°12.05 N	164°46.60 W			20
Sea Lion Rock (Amak) ⁹	Bering Sea	55°27.82 N	163°12.10 W			10
Amak I. And rocks ⁹	Bering Sea	55°24.20 N	163°09.60 W	55°26.15 N	163°08.50 W	10
Bird I.	Gulf of Alaska	54°40.00 N	163°17.2 W			10
Caton I.	Gulf of Alaska	54°22.70 N	162°21.30 W			3
South Rocks	Gulf of Alaska	54°18.14 N	162°41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54°41.98 N	162°26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54°42.75 N	162°26.7 W			10
Pinnacle Rock	Gulf of Alaska	54°46.06 N	161°45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54°49.30 N	161°42.73 W			10
Olga Rocks	Gulf of Alaska	55°00.45 N	161°29.81 W	54°59.09 N	161°30.89 W	10
Jude I.	Gulf of Alaska	55°15.75 N	161°06.27 W			20

TABLE 4 TO PART 679—STELLER SEA LION PROTECTION AREAS POLLOCK FISHERIES RESTRICTIONS—Continued

Sea Lion Rocks (Shumagins)	Gulf of Alaska	55°04.70 N	160°31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54°54.20 N	160°15.40 W	54°56.00 N	160°15.00 W	3
The Whaleback	Gulf of Alaska	55°16.82 N	160°05.04 W			3
Chernabura I.	Gulf of Alaska	54°45.18 N	159°32.99 W	54°45.87 N	159°35.74 W	20
Castle Rock	Gulf of Alaska	55°16.47 N	159°29.77 W			3
Atkins I.	Gulf of Alaska	55°03.20 N	159°17.40 W			20
Spitz I.	Gulf of Alaska	55°46.60 N	158°53.90 W			3
Mitrofanina	Gulf of Alaska	55°50.20 N	158°41.90 W			3
Kak	Gulf of Alaska	56°17.30 N	157°50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55°46.79 N	157°24.89 W			20
Sutwik I.	Gulf of Alaska	56°31.05 N	157°20.47 W	56°32.00 N	157°21.00 W	20
Chowiet I.	Gulf of Alaska	56°00.54 N	156°41.42 W	56°00.30 N	156°41.60 W	20
Nagai Rocks	Gulf of Alaska	55°49.80 N	155°47.50 W			20
Chirikof I.	Gulf of Alaska	55°46.50 N	155°39.50 W	55°46.44 N	155°43.46 W	20
Puale Bay ¹²	Gulf of Alaska	57°40.60 N	155°23.10 W			3,10
Kodiak/Cape Ikolik	Gulf of Alaska	57°17.20 N	154°47.50 W			3
Takli I.	Gulf of Alaska	58°01.75 N	154°31.25 W			10
Cape Kuliak	Gulf of Alaska	58°08.00 N	154°12.50 W			10
Cape Gull	Gulf of Alaska	58°11.50 N	154°09.60 W	58°12.50 N	154°10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57°52.41 N	153°50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56°34.30 N	153°50.96 W			10
Shakun Rock	Gulf of Alaska	58°32.80 N	153°41.50 W			10
Twoheaded I.	Gulf of Alaska	56°54.50 N	153°32.75 W	56°53.90 N	153°33.74 W	10
Cape Douglas (Shaw I.) ¹²	Gulf of Alaska	59°00.00 N	153°22.50 W			20, 10
Kodiak/Cape Barnabas	Gulf of Alaska	57°10.20 N	152°53.05 W			3
Kodiak/Gull Point ⁴	Gulf of Alaska	57°21.45 N	152°36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58°40.10 N	152°31.30 W			10
Ushagat I./SW	Gulf of Alaska	58°54.75 N	152°22.20 W			10
Ugak I. ⁴	Gulf of Alaska	57°23.60 N	152°17.50 W	57°21.90 N	152°17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58°31.15 N	152°13.30 W			10
Long I.	Gulf of Alaska	57°46.82 N	152°12.90 W			10
Sud I.	Gulf of Alaska	58°54.00 N	152°12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57°37.90 N	152°08.25 W			10
Sugarloaf I.	Gulf of Alaska	58°53.25 N	152°02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58°20.53 N	151°48.83 W			10
Marmot I. ⁵	Gulf of Alaska	58°13.65 N	151°47.75 W	58°09.90 N	151°52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59°06.00 N	151°46.30 W			10
Perl	Gulf of Alaska	59°05.75 N	151°39.75 W			10

TABLE 4 TO PART 679—STELLER SEA LION PROTECTION AREAS POLLOCK FISHERIES RESTRICTIONS—Continued

Gore Point	Gulf of Alaska	59°12.00 N	150°58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59°20.50 N	150°23.00 W	59°21.00 N	150°24.50 W	20
Steep Point	Gulf of Alaska	59°29.05 N	150°15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59°31.20 N	149°37.50 W			10
Chiswell Islands	Gulf of Alaska	59°36.00 N	149°34.00 W			10
Rugged Island	Gulf of Alaska	59°50.00 N	149°23.10 W	59°51.00 N	149°24.70 W	10
Point Elrington ^{7, 10}	Gulf of Alaska	59°56.00 N	148°15.20 W			20
Perry I. ⁷	Gulf of Alaska	60°44.00 N	147°54.60 W			
The Needle ⁷	Gulf of Alaska	60°06.64 N	147°36.17 W			
Point Eleanor ⁷	Gulf of Alaska	60°35.00 N	147°34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59°52.90 N	147°20.65 W			20
Glacier Island ⁷	Gulf of Alaska	60°51.30 N	147°14.50 W			
Seal Rocks (Cordova) ¹⁰	Gulf of Alaska	60°09.78 N	146°50.30 W			20
Cape Hinchinbrook ¹⁰	Gulf of Alaska	60°14.00 N	146°38.50 W			20
Middleton I.	Gulf of Alaska	59°28.30 N	146°18.80 W			10
Hook Point ¹⁰	Gulf of Alaska	60°20.00 N	146°15.60 W			20
Cape St. Elias	Gulf of Alaska	59°47.50 N	144°36.20 W			20

¹Where two sets of coordinates are given, the baseline extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

²Closures as stated in § 679.22(a)(7)(iv), (a)(8)(ii), and (b)(2)(ii).

³This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N / 170°00' W, and 55°00' N / 168°11'4.75" W.

Closure to directed fishing for pollock around Uliaga and Kagamil is 20 nm for waters west of 170° W long. and 10 nm for waters east of 170° W long.

⁴Trawl closure between 0 nm to 10 nm is effective from January 20 through May 31.

Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

⁵Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31.

Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

⁶Restriction area includes only waters of the Gulf of Alaska Area.

⁷Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

⁸No-fishing zones are the waters between 0 nm and the nm specified in column 7 of this table around each site and within the BA.

⁹This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season.

This area consists of all waters of the Bering Sea subarea south of a line connecting the points

55°46'30" N lat. 163°00'00" W long.

54°42'9" N lat. 165°08'00" W long.

54°26'30" N lat. 165°40'00" W long.

54°18'40" N lat. 166°12'00" W long. and

54°8'50" N lat. 167°00'00" W long.

¹⁰The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

¹¹Some or all of the restricted area is located in the Segum Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

¹²The 3 nm trawl closure around Puale Bay and the 20 nm trawl closure around Cape Douglas/Shaw I. are effective January 20 through May 31. The 10 nm trawl closure around Puale Bay and the 10 nm trawl closure around Cape Douglas/Shaw I. are effective August 25 through November 1.

■ 21. Table 9 is removed and reserved;
and Tables 10, 11, and 12 to part 679 are
revised to read as follows:

BILLING CODE 3510-22-S

Table 10 to Part 679 -- Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20(j))														
Code	Species	Pollock	Pacific cod	DW flat	Rex sole	Flathead sole	SW Flat	Arrowtooth flounder	Sablefish	Aggregated rockfish ⁽⁸⁾	SR/RE ERA	DSR SEO (C/PS only)	Atka mackerel	Aggregated forage fish ⁽¹⁰⁾	Skates ⁽¹¹⁾	Other ⁽⁷⁾ species
110	Pacific cod	20	na ⁽⁹⁾	20	20	20	20	35	1	5	⁽¹⁾	10	20	2	20	20
121	Arrowtooth	5	5	0	0	0	0	na	0	0	0	0	0	2	0	20
122	Flathead sole	20	20	20	20	na	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/ 151	Shortraker/ rougheye ⁽¹⁾	20	20	20	20	20	20	35	7	15	na	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	⁽¹⁾	10	na	2	20	20
270	Pollock	na	20	20	20	20	20	35	1	5	⁽¹⁾	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35	na	15	7	1	20	2	20	20
Flatfish, deep-water ⁽²⁾		20	20	na	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow-water ⁽³⁾		20	20	20	20	20	na	35	1	5	⁽¹⁾	10	20	2	20	20
Rockfish, other ⁽⁴⁾		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic ⁽⁵⁾		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO ⁽⁶⁾		20	20	20	20	20	20	35	7	15	7	na	20	2	20	20
Skates ⁽¹¹⁾		20	20	20	20	20	20	35	1	5	⁽¹⁾	10	20	2	na	20
Other species ⁽⁷⁾		20	20	20	20	20	20	35	1	5	⁽¹⁾	10	20	2	20	na
Aggregated amount of non-groundfish species ⁽¹²⁾		20	20	20	20	20	20	35	1	5	⁽¹⁾	10	20	2	20	20

Notes to Table 10 to part 679

1	Shortraker/rougheye rockfish		SR/RE	Shortraker/rougheye rockfish (171)	
				Shortraker rockfish (152)	
				Rougheye rockfish (151)	
			SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA)	
Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish					
2	Deep-water flatfish			Dover sole, Greenland turbot, and deep-sea sole	
3	Shallow-water flatfish			Flatfish not including deep-water flatfish, flathead sole, rex sole, or arrowtooth flounder	
4	Other rockfish			Western Regulatory Area	means slope rockfish and demersal shelf rockfish
				Central Regulatory Area	
				West Yakutat District	
				Southeast Outside District	
means slope rockfish					
Slope rockfish					
			<i>S. aurora</i> (aurora)	<i>S. variegatus</i> (harlequin)	<i>S. brevispinis</i> (silvergrev)
			<i>S. melanostomus</i> (blackgill)	<i>S. wilsoni</i> (pygmy)	<i>S. diploproa</i> (splitnose)
			<i>S. paucispinis</i> (bocaccio)	<i>S. babcocki</i> (redbanded)	<i>S. saxicola</i> (stripetail)
			<i>S. goodei</i> (chilipepper)	<i>S. proriger</i> (redstripe)	<i>S. miniatus</i> (vermilion)
			<i>S. crameri</i> (darkblotch)	<i>S. zacentrus</i> (sharpchin)	<i>S. reedi</i> (yellowmouth)
			<i>S. elongatus</i> (greenstriped)	<i>S. jordani</i> (shortbelly)	
In the Eastern GOA only, Slope rockfish also includes <i>S. polyspinous</i> . (Northern)					
5	Pelagic shelf rockfish			<i>S. ciliatus</i> (dusky)	<i>S. flavidus</i> (yellowtail)
6	Demersal shelf rockfish (DSR)			<i>S. entomelas</i> (widow)	
				<i>S. pinniger</i> (canary)	<i>S. maliger</i> (quillback)
				<i>S. nebulosus</i> (china)	<i>S. helvomaculatus</i> (rosethorn)
				<i>S. caurinus</i> (copper)	<i>S. nigrocinctus</i> (tiger)
DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO)					
The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.					
Limits on sale and requirements for disposal of DSR are set out at § 679.20(j).					
7	Other species		sculpins	octopus	squid
8	Aggregated rockfish		Means rockfish of the genera <i>Sebastes</i> and <i>Sebastolobus</i> defined at § 679.2 except in:		
			Southeast Outside District where DSR is a separate category for those species marked with a numerical percentage		
			Eastern Regulatory Area where SR/RE is a separate category for those species marked with a numerical percentage		

Notes to Table 10 to part 679

9	N/A	not applicable	
10	Aggregated forage fish (all species of the following families)		
	Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>)		209
	Capelin smelt (family <i>Osmeridae</i>)		516
	Deep-sea smelts (family <i>Bathylagidae</i>)		773
	Eulachon smelt (family <i>Osmeridae</i>)		511
	Gunnels (family <i>Pholidae</i>)		207
	Krill (order <i>Euphausiacea</i>)		800
	Laternfishes (family <i>Myctophidae</i>)		772
	Pacific herring (family <i>Clupeidae</i>)		235
	Pacific Sand fish (family <i>Trichodontidae</i>)		206
	Pacific Sand lance (family <i>Ammodytidae</i>)		774
	Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <i>Stichaeidae</i>)		208
	Surf smelt (family <i>Osmeridae</i>)		515
11	Skates Species and Groups		
	Big Skates		702
	Longnose Skates		701
	Other Skates		700
12	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	

Table 11 to Part 679—BSAI Retainable Percentages

BASIS SPECIES			INCIDENTAL CATCH SPECIES ⁵														
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrowtooth	Yellowfin sole	Other flatfish ²	Rock sole	Flathead sole	Greenland turbot	Sablefish ¹	Short-raker/rougheye	Aggregated rockfish ⁶	Squid	Aggregated Forage fish ⁷	Other species ⁴
110	Pacific cod	20	na ⁵	20	20	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth	0	0	0	0	na	0	0	0	0	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	35	35	35	35	35	na	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	na	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	na	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na	15	7	15	20	2	20
136	Northern Pacific	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
141	Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
152/151	Shortraker/Rougheye	20	20	20	20	35	20	20	20	20	35	15	na	5	20	2	20
193	Atka mackerel	20	20	na	20	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish ¹	20	20	20	20	35	20	20	20	20	35	na	7	15	20	2	20
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2	5	na	2	20
	Other flatfish ²	20	20	20	35	35	35	na	35	35	1	1	2	5	20	2	20
	Other rockfish ³	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
	Other species ⁴	20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na
	Aggregated amount non-groundfish species ⁸	20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

¹Sablefish: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).²Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.³Other rockfish includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.⁴Other species includes sculpins, sharks, skates and octopus. Forage fish, as defined at Table 2c to this part are not included in the "other species" category.⁵na = not applicable⁶Aggregated rockfish includes all of the genera *Sebastes* and *Sebastolobus*, except shortraker and rougheye rockfish.⁷Forage fish are defined at Table 2c to this part.⁸All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

TABLE 12 TO PART 679—STELLER SEA LION PROTECTION AREAS, 3NM NO GROUND FISH FISHING SITES

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to ¹		No transit ^{2,3} (nm)
		Latitude	Longitude	Latitude	Longitude	
Walrus I. (Pribilofs)	Bering Sea	57°11.00 N	169°56.00 W			Y
Attu I./Cape Wrangell	Aleutian I.	52°54.60 N	172°27.90 E	52°55.40 N	172°27.20 E	Y
Agattu I./Gillon Pt.	Aleutian I.	52°24.13 N	173°21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52°22.50 N	173°43.30 E	52°21.80 N	173°41.40 E	Y
Buldir I.	Aleutian I.	52°20.25 N	175°54.03 E	52°20.38 N	175°53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51°52.50 N	177°12.70 E	51°53.50 N	177°12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51°57.16 N	177°20.41 E	51°57.24 N	177°20.53 E	Y
Ayugadak Point	Aleutian I.	51°45.36 N	178°24.30 E			Y
Amchitka I./Column Rocks	Aleutian I.	51°32.32 N	178°49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51°22.26 N	179°27.93 E	51°22.00 N	179°27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52°01.40 N	179°36.90 E	52°01.50 N	179°39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51°57.30 N	179°46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51°18.90 N	178°58.90 W	51°18.70 N	178°59.60 W	Y
Tag I.	Aleutian I.	51°33.50 N	178°34.50 W			Y
Gramp Rock	Aleutian I.	51°28.87 N	178°20.58 W			Y
Adak I.	Aleutian I.	51°35.50 N	176°57.10 W	51°37.40 N	176°59.60 W	Y
Kasatochi I.	Aleutian I.	52°11.11 N	175°31.00 W			Y
Agligadak I.	Aleutian I.	52°06.09 N	172°54.23 W			Y
Seguam I./Saddleridge Pt.	Aleutian I.	52°21.05 N	172°34.40 W	52°21.02 N	172°33.60 W	Y
Yunaska I.	Aleutian I.	52°41.40 N	170°36.35 W			Y
Adugak I.	Bering Sea	52°54.70 N	169°10.50 W			Y
Ogchul I.	Gulf of Alaska	52°59.71 N	168°24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53°55.69 N	168°02.05 W			Y
Akutan I./Cape Morgan	Gulf of Alaska	54°03.39 N	165°59.65 W	54°03.70 N	166°03.68 W	Y
Akun I./Billings Head	Bering Sea	54°17.62 N	165°32.06 W	54°17.57 N	165°31.71 W	Y
Ugamak I.	Gulf of Alaska	54°13.50 N	164°47.50 W	54°12.80 N	164°47.50 W	Y
Sea Lion Rock (Amak)	Bering Sea	55°27.82 N	163°12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54°41.98 N	162°26.7 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54°42.75 N	162°26.7 W			Y
Pinnacle Rock	Gulf of Alaska	54°46.06 N	161°45.85 W			Y
Chernabura I.	Gulf of Alaska	54°45.18 N	159°32.99 W	54°45.87 N	159°35.74 W	Y
Atkins I.	Gulf of Alaska	55°03.20 N	159°17.40 W			Y
Chowiet I.	Gulf of Alaska	56°00.54 N	156°41.42 W	56°00.30 N	156°41.60 W	Y
Chirikof I.	Gulf of Alaska	55°46.50 N	155°39.50 W	55°46.44 N	155°43.46 W	Y

TABLE 12 TO PART 679—STELLER SEA LION PROTECTION AREAS, 3NM NO GROUND FISH FISHING SITES—Continued

Sugarloaf I.	Gulf of Alaska	58°53.25 N	152°02.40 W			Y
Marmot I.	Gulf of Alaska	58°13.65 N	151°47.75 W	58°09.90 N	151°52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59°20.50 N	150°23.00 W	59°21.00 N	150°24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59°52.90 N	147°20.65 W			
Seal Rocks (Cordova)	Gulf of Alaska	60°09.78 N	146°50.30 W			

¹Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

²See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

■ 22. Tables 14a and 14b to part 679 are revised to read as follows:

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA

Port Name	NMFS Code	ADF&G Code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	300	ANI
Anvik	301	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	302	BET
Captains Bay	119	DUT
Cheforak	189	CHF
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska	119	DUT
Egegik	122	EGE
Ekuk	303	EKU
Elfin Cove	123	ELF
Emmonak	304	EMM
Excursion Inlet	124	XIP

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
False Pass	125	FSP
Fairbanks	305	FBK
Galena	306	GAL
Glacier Bay	307	GLB
Glennallen	308	GLN
Gustavus	127	GUS
Haines	128	HNS
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	309	HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag	310	KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	KIP
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	311	KOT
Larsen Bay	327	LRB
Mekoryuk	147	MEK
Metlakatla	148	MET

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Moser Bay	312	MOS
Naknek	149	NAK
Nenana	313	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	314	NUN
Old Harbor	153	OLD
Other Alaska ¹	499	OAK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	315	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	316	LIO
Port Moller	317	MOL
Port Protection	161	PRO
Quinhagak	187	QUK
Sand Point	164	SPT
Savoonga	165	SAV
Selawik	326	SWK
Seldovia	166	SEL
Seward	167	SEW

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Sitka	168	SIT
Skagway	169	SKG
Soldotna	318	SOL
St. George	170	STG
St. Mary	319	STM
St. Paul	172	STP
Tee Harbor	136	JNU

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	TOB
Tununak	178	TUN
Ugashik	320	UGA
Unalakleet	321	UNA

TABLE 14A TO PART 679—PORT OF LANDING CODES, ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Valdez	181	VAL
Wasilla	322	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

¹To report a landing at an Alaska location not currently assigned a location code number, use "Other Alaska" code "499" or "OAK."

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA
(California, Canada, Oregon, and Washington)

Port State or Country	Port Name	NMFS Code	ADF&G Code
CALIFORNIA	Eureka	500	EUR
	Other California ¹	599	OCA
CANADA	Other Canada ¹	899	OCN
	Port Edward, B.C.	802	PRU
	Prince Rupert, B.C.	802	PRU
	Vancouver, B.C.	803	VAN
OREGON	Astoria	600	AST
	Newport	603	NPT
	Other Oregon ¹	699	OOR
	Portland	323	POR
	Warrenton	604	WAR
WASHINGTON	Anacortes	700	ANA
	Bellingham	702	BEL
	Blaine	717	BLA
	Everett	704	EVT
	La Conner	708	LAC
	Olympia	324	OLY
	Other Washington ¹	799	OWA
	Seattle	715	SEA
	Tacoma	325	TAC

¹To report a landing at a location not currently assigned a location code number, use the code for "Other California", "Other Oregon", "Other Washington", or "Other Canada" at which the landing occurs.

* * * * *

■ 23. Table 15 to part 679 is revised to read as follows:

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE
(X indicates where this code is used)

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/ check-out	Numeric gear code	IERS eLandings	ADF&G COAR
NMFS AND ADF&G GEAR CODES						
Hook-and-line	HAL	X	X	61	X	X
Jig, mechanical	JIG	X	X	26	X	X
Pot	POT	X	X	91	X	X
Trawl, nonpelagic/ bottom	NPT	X	X	07	X	X
Trawl, pelagic/ midwater	PTR	X	X	47	X	X
Troll, dinglebar	TROLL	X	X	25	X	X
Troll, hand	TROLL	X	X	05	X	X
Troll, power gurdy	TROLL	X	X	15	X	X
All other gear types	OTH	X	X			
ADF&G GEAR CODES						
Diving				11	X	X
Dredge				22	X	X
Dredge, hydro/me- chanical				23	X	X
Fish ladder/race- way				77	X	X
Fish wheel				08	X	X
Gillnet, drift				03	X	X
Gillnet, herring				34	X	X
Gillnet, set				04	X	X
Gillnet, sunken				41	X	X
Handpicked				12	X	X
Net, dip				13	X	X
Net, ring				10	X	X
Other/specify				99	X	X
Pound				21	X	X
Seine, purse				01	X	X
Seine, beach				02	X	X
Shovel				18	X	X
Trap				90	X	X
Trawl, beam				17	X	X
Trawl, double otter				27	X	
Trawl, pair				37	X	X
Weir				14	X	X

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE—Continued

(X indicates where this code is used)

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/ check-out	Numeric gear code	IERS eLandings	ADF&G COAR
FIXED GEAR						
Authorized gear for sablefish harvested from any GOA reporting area	All longline gear (hook-and-line, jig, troll, and handline) and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.					
Authorized gear for sablefish harvested from any BSAI reporting area	All hook-and-line gear and all pot gear.					
Authorized gear for halibut harvested from any IFQ regulatory area	All fishing gear comprised of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.					

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 24. The authority citation for part 680 continue to read as follows:

Authority: 16 U.S.C. 1862.

■ 25. In § 680.2, under the definition of “Crab individual fishing quota (crab IFQ)”, paragraphs (1), (2) introductory text, (3), and (4) are revised and a definition for “Sideboards” is added in alphabetical order to read as follows:

§ 680.2 Definitions.

* * * * *

Crab individual fishing quota (crab IFQ) * * *

(1) *Catcher vessel crew (CVC) IFQ* means crab IFQ derived from QS initially issued to persons who historically held CFEC crab permits and signed fish tickets for qualifying landings based on pounds delivered raw; to annually harvest, but not process, CR crab onboard the vessel used to harvest that crab.

(2) *Catcher vessel owner (CVO) IFQ* means crab IFQ derived from QS initially issued to persons who held LLP crab permits and had qualifying landings based on pounds delivered raw; to annually harvest, but not process, CR crab onboard the vessel used to harvest that crab.

* * * * *

(3) *Catcher/processor owner (CPO) IFQ* means crab IFQ derived from QS initially issued to persons who held LLP crab permits and had qualifying landings derived from landings processed at sea, to annually harvest and process CR crab.

(4) *Catcher/processor crew (CPC) IFQ* means crab IFQ derived from QS initially issued to persons who historically held CFEC crab permits and signed fish tickets for qualifying landings based on landings processed at sea, to annually harvest and process CR crab.

* * * * *

Sideboards (see § 680.22).

* * * * *

■ 26. In § 680.4, paragraph (d)(3) is revised to read as follows:

§ 680.4 Permits.

* * * * *

(d) * * *

(3) On an annual basis, the Regional Administrator will issue a crab IFQ permit to a person who submits a complete annual application for a crab IFQ/IPQ permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

* * * * *

■ 27. In § 680.5:

■ A. Paragraphs (c) and (d) are removed and reserved.

■ B. Paragraphs (a)(2)(i)(G) and (b) are revised.

■ C. Paragraphs (a)(2)(i)(L) and (m) are added.

The revisions and additions read as follows:

§ 680.5 Recordkeeping and reporting (R&R).

(a) * * *

(2) * * *

(i) * * *

Record-keeping and reporting report	Person responsible	Reference
* * * * *		
(G) CR crab landing report	RCR	§ 679.5(e)(9)
* * * * *		
(L) CR RCR Ex vessel Volume and Value Report	RCR	§ 680.5(m)

* * * * *

(b) *IFQ crab landings*—(1) *Landing reports*. See § 679.5(e) of this chapter.

(2) *Properly debited landing*. All landed crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the catch was harvested, and IPQ account under which it was received, as appropriate (see § 679.5(e) of this chapter).

* * * * *

(m) *CR Registered Crab Receiver (RCR) Ex-vessel Volume and Value Report*—(1) *Applicability*. An RCR that also operates as a shoreside processor or stationary floating crab processor and receives and purchases landings of CR crab must submit annually to NMFS a complete CR RCR Ex-vessel Volume and Value Report, as described in this paragraph (m), for each reporting period in which the RCR receives CR crab.

(2) *Reporting period*. The reporting period of the CR RCR Ex-vessel Volume and Value Report shall extend from August 15 through April 30 of the following year, inclusive.

(3) *Due date.* A complete CR RCR Ex-vessel Volume and Value Report must be received by the Regional Administrator not later than May 15 of the reporting period in which the RCR received the CR crab.

(4) *Information required.* The RCR must log in to <http://alaskafisheries.noaa.gov> using the RCR's password and NMFS person ID to submit a CR RCR Ex-vessel Volume and Value Report. The NMFS software autofills the RCR name. The User must review the autofilled cells to ensure that they are accurate. The RCR must enter the information in paragraphs (m)(4)(i) through (iv) of this section for a complete CR RCR Ex-vessel Volume and Value Report for priced crab delivered raw:

(i) *RCR identification.* (A) RCR permit number.

(B) Landing month.

(C) Port (location of facility or vessel).

(ii) *CR crab program* (e.g., IFQ, CDQ, ADAK).

(iii) *CR crab pounds purchased and ex-vessel value.* Enter for each program, fishery, species, and month.

(A) *Pounds purchased.* The total CR crab pounds purchased by fishery and species for each month.

(B) *Ex-vessel value paid.* The total gross ex-vessel value paid for raw CR crab pounds before any deductions are made for goods and services provided to the CR crab harvesters. The gross value includes all value paid in any form (e.g., dollars, goods, services, bait, ice, fuel, repairs, machinery replacement, etc.), and any retro payments paid for crab in paragraph (m)(4)(iii)(A) of this section.

(iv) *Certification.* By using the RCR NMFS ID and password and submitting the report, the RCR certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(5) *Submittal.* The RCR must complete and submit online by electronic submission to NMFS the CR Registered Crab Receiver Ex-vessel Volume and Value Report available at <https://alaskafisheries.noaa.gov>.

■ 28. In § 680.23, paragraph (b)(4) is revised to read as follows:

§ 680.23 Equipment and operational requirements.

* * * * *

(b) * * *

(4) Offload all CR crab product processed onboard at a shoreside location in the United States accessible

by road or regularly scheduled air service and weigh that product on a scale approved by the state in which the CR crab product is removed from the vessel that harvested the CR crab; and

* * * * *

■ 29. In § 680.44, paragraph (a)(2)(i) is revised to read as follows:

§ 680.44 Cost recovery.

(a) * * *

(2) * * *

(i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year, except for crab designated as personal use or deadloss, or crab confiscated by NMFS or the State of Alaska.

* * * * *

§§ 680.7, 680.20, and 680.40 [Amended]

■ 30. At each of the locations shown in the Location column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 680.7(e)(1)	without a valid crab IFQ permit	without a legible copy of a valid crab IFQ permit	1
§ 680.20(g)(2)(ix)	not required under this section, except as permitted by paragraph (j) of this section.	unless required under this section.	1
§ 680.40(c)(2)(vi)(A)	§ 679.40(k)(5)(v)	§ 679.4(k)(5)(v) of this chapter	1

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LIST OF PUBLIC LAWS

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H.R. 2040/P.L. 110-451

Civil Rights Act of 1964 Commemorative Coin Act (Dec. 2, 2008; 122 Stat. 5021)

S. 602/P.L. 110-452

Child Safe Viewing Act of 2007 (Dec. 2, 2008; 122 Stat. 5025)

S. 1193/P.L. 110-453

To direct the Secretary of the Interior to take into trust 2 parcels of Federal land for the benefit of certain Indian Pueblos in the State of New Mexico, and for other purposes. (Dec. 2, 2008; 122 Stat. 5027)

Last List December 2, 2008

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3 (2006 Compilation and Parts 100 and 102)	(869-064-00003-3)	35.00	1 Jan. 1, 2008
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21 Parts:			
1-99	(869-064-00062-9)	43.00	Apr. 1, 2008
100-169	(869-064-00063-7)	52.00	Apr. 1, 2008
170-199	(869-064-00064-5)	53.00	Apr. 1, 2008
200-299	(869-064-00065-3)	20.00	Apr. 1, 2008
300-499	(869-064-00066-1)	33.00	Apr. 1, 2008
500-599	(869-064-00067-0)	50.00	Apr. 1, 2008
600-799	(869-064-00068-8)	20.00	Apr. 1, 2008
800-1299	(869-064-00069-6)	63.00	Apr. 1, 2008
1300-End	(869-064-00070-0)	28.00	Apr. 1, 2008
22 Parts:			
1-299	(869-064-00071-8)	66.00	Apr. 1, 2008
300-End	(869-064-00072-6)	48.00	Apr. 1, 2008
23	(869-064-00073-4)	48.00	Apr. 1, 2008
24 Parts:			
0-199	(869-064-00074-2)	63.00	Apr. 1, 2008
200-499	(869-064-00075-1)	53.00	Apr. 1, 2008
500-699	(869-064-00076-9)	33.00	Apr. 1, 2008
700-1699	(869-064-00077-7)	64.00	Apr. 1, 2008
1700-End	(869-064-00078-5)	33.00	Apr. 1, 2008
25	(869-064-00079-3)	67.00	Apr. 1, 2008
26 Parts:			
§§ 1.0-1.160	(869-064-00080-7)	52.00	Apr. 1, 2008
§§ 1.61-1.169	(869-064-00081-5)	66.00	Apr. 1, 2008
§§ 1.170-1.300	(869-064-00082-3)	63.00	Apr. 1, 2008
§§ 1.301-1.400	(869-064-00083-1)	50.00	Apr. 1, 2008
§§ 1.401-1.440	(869-064-00084-0)	59.00	Apr. 1, 2008
§§ 1.441-1.500	(869-064-00085-8)	61.00	Apr. 1, 2008
§§ 1.501-1.640	(869-064-00086-6)	52.00	Apr. 1, 2008
§§ 1.641-1.850	(869-064-00087-4)	64.00	Apr. 1, 2008
§§ 1.851-1.907	(869-064-00088-2)	64.00	Apr. 1, 2008
§§ 1.908-1.1000	(869-064-00089-1)	63.00	Apr. 1, 2008
§§ 1.1001-1.1400	(869-064-00090-4)	64.00	Apr. 1, 2008
§§ 1.1401-1.1550	(869-064-00091-2)	61.00	Apr. 1, 2008
§§ 1.1551-End	(869-064-00092-1)	53.00	Apr. 1, 2008
2-29	(869-064-00093-9)	63.00	Apr. 1, 2008
30-39	(869-064-00094-7)	44.00	Apr. 1, 2008
40-49	(869-064-00095-5)	31.00	Apr. 1, 2008
50-299	(869-064-00096-3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-064-00097-1)	64.00	Apr. 1, 2008	63 (63.1440-63.6175)	(869-064-00150-1)	35.00	July 1, 2008
500-599	(869-064-00098-0)	12.00	⁵ Apr. 1, 2008	63 (63.6580-63.8830)	(869-064-00151-0)	35.00	July 1, 2008
600-End	(869-064-00099-8)	20.00	Apr. 1, 2008	63 (63.8980-End)	(869-064-00152-8)	38.00	July 1, 2008
27 Parts:				64-71	(869-064-00153-6)	32.00	July 1, 2008
1-39	(869-064-00100-5)	35.00	Apr. 1, 2008	72-80	(869-064-00154-4)	65.00	July 1, 2008
40-399	(869-064-00101-3)	67.00	Apr. 1, 2008	81-84	(869-064-00155-2)	53.00	July 1, 2008
400-End	(869-064-00102-1)	21.00	Apr. 1, 2008	85-86 (85-86.599-99)	(869-064-00156-1)	64.00	July 1, 2008
28 Parts:				86 (86.600-1-End)	(869-064-00157-9)	53.00	July 1, 2008
0-42	(869-064-00103-0)	64.00	July 1, 2008	87-99	(869-064-00158-7)	63.00	July 1, 2008
43-End	(869-064-00104-8)	63.00	July 1, 2008	100-135	(869-064-00159-5)	48.00	July 1, 2008
29 Parts:				136-149	(869-064-00160-9)	64.00	July 1, 2008
0-99	(869-064-00105-6)	53.00	July 1, 2008	150-189	(869-064-00161-7)	53.00	July 1, 2008
100-499	(869-064-00106-4)	26.00	July 1, 2008	190-259	(869-064-00162-5)	42.00	July 1, 2008
500-899	(869-064-00107-2)	61.00	⁷ July 1, 2008	260-265	(869-064-00163-3)	53.00	July 1, 2008
900-1899	(869-064-00108-1)	39.00	July 1, 2008	266-299	(869-064-00164-1)	53.00	July 1, 2008
1900-1910 (§§ 1900 to				300-399	(869-064-00165-0)	45.00	July 1, 2008
1910.999)	(869-064-00109-9)	64.00	July 1, 2008	400-424	(869-064-00166-8)	59.00	July 1, 2008
1910 (§§ 1910.1000 to				425-699	(869-064-00167-6)	61.00	⁸ July 1, 2008
end)	(869-064-00110-2)	46.00	⁸ July 1, 2008	700-789	(869-064-00168-4)	64.00	July 1, 2008
1911-1925	(869-064-00111-1)	33.00	July 1, 2008	790-End	(869-064-00169-2)	64.00	July 1, 2008
1926	(869-064-00112-9)	53.00	July 1, 2008	41 Chapters:			
1927-End	(869-064-00113-7)	65.00	July 1, 2008	1, 1-1 to 1-10	13.00	³ July 1, 1984	
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)	13.00	³ July 1, 1984	
1-199	(869-064-00114-5)	60.00	July 1, 2008	3-6	14.00	³ July 1, 1984	
200-699	(869-064-00115-3)	53.00	July 1, 2008	7	6.00	³ July 1, 1984	
700-End	(869-064-00116-1)	61.00	July 1, 2008	8	4.50	³ July 1, 1984	
31 Parts:				9	13.00	³ July 1, 1984	
0-199	(869-064-00117-0)	44.00	July 1, 2008	10-17	9.50	³ July 1, 1984	
200-499	(869-064-00118-8)	49.00	July 1, 2008	18, Vol. I, Parts 1-5	13.00	³ July 1, 1984	
500-End	(869-064-00119-6)	65.00	July 1, 2008	18, Vol. II, Parts 6-19	13.00	³ July 1, 1984	
32 Parts:				18, Vol. III, Parts 20-52	13.00	³ July 1, 1984	
1-39, Vol. I		15.00	² July 1, 1984	19-100	13.00	³ July 1, 1984	
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-064-00170-6)	27.00	July 1, 2008
1-39, Vol. III		18.00	² July 1, 1984	101	(869-064-00171-4)	21.00	⁸ July 1, 2008
1-190	(869-064-00120-0)	64.00	July 1, 2008	102-200	(869-064-00172-2)	56.00	July 1, 2008
191-399	(869-064-00121-8)	66.00	July 1, 2008	201-End	(869-064-00173-1)	27.00	July 1, 2008
400-629	(869-064-00122-6)	53.00	July 1, 2008	42 Parts:			
630-699	(869-064-00123-4)	40.00	July 1, 2008	1-399	(869-062-00174-6)	61.00	Oct. 1, 2007
700-799	(869-064-00124-2)	49.00	July 1, 2008	400-413	(869-062-00175-4)	32.00	Oct. 1, 2007
800-End	(869-064-00125-1)	50.00	July 1, 2008	414-429	(869-062-00176-2)	32.00	Oct. 1, 2007
33 Parts:				430-End	(869-062-00177-1)	64.00	Oct. 1, 2007
1-124	(869-064-00126-9)	60.00	July 1, 2008	43 Parts:			
125-199	(869-064-00127-7)	61.00	July 1, 2008	1-999	(869-062-00178-9)	56.00	Oct. 1, 2007
200-End	(869-064-00128-5)	60.00	July 1, 2008	1000-end	(869-062-00179-7)	62.00	Oct. 1, 2007
34 Parts:				44	(869-062-00180-1)	50.00	Oct. 1, 2007
1-299	(869-064-00129-3)	53.00	July 1, 2008	45 Parts:			
300-399	(869-064-00130-7)	43.00	July 1, 2008	1-199	(869-062-00181-9)	60.00	Oct. 1, 2007
400-End & 35	(869-064-00131-5)	64.00	July 1, 2008	200-499	(869-060-00182-7)	34.00	¹⁰ Oct. 1, 2007
36 Parts:				500-1199	(869-062-00183-5)	56.00	Oct. 1, 2007
1-199	(869-064-00132-3)	40.00	July 1, 2008	1200-End	(869-062-00184-3)	61.00	Oct. 1, 2007
200-299	(869-064-00133-1)	37.00	July 1, 2008	46 Parts:			
300-End	(869-064-00134-0)	64.00	July 1, 2008	1-40	(869-062-00185-1)	46.00	Oct. 1, 2007
37	(869-064-00135-8)	61.00	July 1, 2008	41-69	(869-062-00186-0)	39.00	Oct. 1, 2007
38 Parts:				70-89	(869-062-00187-8)	14.00	Oct. 1, 2007
0-17	(869-064-00136-6)	63.00	July 1, 2008	90-139	(869-062-00188-6)	44.00	Oct. 1, 2007
18-End	(869-064-00137-4)	65.00	July 1, 2008	140-155	(869-062-00189-4)	25.00	Oct. 1, 2007
39	(869-064-00138-2)	45.00	July 1, 2008	156-165	(869-062-00190-8)	34.00	Oct. 1, 2007
40 Parts:				166-199	(869-062-00191-6)	46.00	Oct. 1, 2007
1-49	(869-064-00139-1)	63.00	July 1, 2008	200-499	(869-062-00192-4)	40.00	Oct. 1, 2007
50-51	(869-064-00140-4)	48.00	July 1, 2008	500-End	(869-062-00193-2)	25.00	Oct. 1, 2007
52 (52.01-52.1018)	(869-064-00141-2)	61.00	July 1, 2008	47 Parts:			
52 (52.1019-End)	(869-064-00142-1)	67.00	July 1, 2008	0-19	(869-062-00194-1)	61.00	Oct. 1, 2007
53-59	(869-064-00143-9)	34.00	July 1, 2008	20-39	(869-062-00195-9)	46.00	Oct. 1, 2007
60 (60.1-End)	(869-064-00144-7)	61.00	July 1, 2008	40-69	(869-062-00196-7)	40.00	Oct. 1, 2007
60 (Apps)	(869-064-00145-5)	60.00	July 1, 2008	70-79	(869-062-00197-5)	61.00	Oct. 1, 2007
61-62	(869-064-00146-3)	48.00	July 1, 2008	80-End	(869-062-00198-3)	61.00	Oct. 1, 2007
63 (63.1-63.599)	(869-064-00147-1)	61.00	July 1, 2008	48 Chapters:			
63 (63.600-63.1199)	(869-064-00148-0)	50.00	⁸ July 1, 2008	1 (Parts 1-51)	(869-062-00199-1)	63.00	Oct. 1, 2007
63 (63.1200-63.1439)	(869-064-00149-8)	53.00	July 1, 2008	1 (Parts 52-99)	(869-062-00200-9)	49.00	Oct. 1, 2007
				2 (Parts 201-299)	(869-062-00201-7)	50.00	Oct. 1, 2007
				3-6	(869-062-00202-5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7-14	(869-062-00203-3)	56.00	Oct. 1, 2007
15-28	(869-064-00204-4)	50.00	Oct. 1, 2008
29-End	(869-062-00205-0)	47.00	Oct. 1, 2007
49 Parts:			
1-99	(869-062-00206-8)	60.00	Oct. 1, 2007
100-185	(869-062-00207-6)	63.00	Oct. 1, 2007
186-199	(869-062-00208-4)	23.00	Oct. 1, 2007
200-299	(869-062-00208-1)	32.00	Oct. 1, 2007
300-399	(869-062-00210-6)	32.00	Oct. 1, 2007
400-599	(869-062-00210-3)	64.00	Oct. 1, 2007
600-999	(869-062-00212-2)	19.00	Oct. 1, 2007
1000-1199	(869-062-00213-1)	28.00	Oct. 1, 2007
1200-End	(869-062-00214-9)	34.00	Oct. 1, 2007
50 Parts:			
1-16	(869-064-00215-0)	14.00	Oct. 1, 2008
17.1-17.95(b)	(869-062-00216-5)	32.00	Oct. 1, 2007
17.95(c)-end	(869-062-00217-3)	32.00	Oct. 1, 2007
17.96-17.99(h)	(869-062-00218-1)	61.00	Oct. 1, 2007
17.99(i)-end and 17.100-end	(869-062-00219-0)	47.00	⁹ Oct. 1, 2007
18-199	(869-062-00226-3)	50.00	Oct. 1, 2007
200-599	(869-062-00221-1)	45.00	Oct. 1, 2007
600-659	(869-062-00222-0)	31.00	Oct. 1, 2007
660-End	(869-062-00223-8)	31.00	Oct. 1, 2007
CFR Index and Findings			
Aids	(869-064-00050-5)	65.00	Jan. 1, 2008
Complete 2008 CFR set	1,499.00		2008
Microfiche CFR Edition:			
Subscription (mailed as issued)	406.00		2008
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Complete set (one-time mailing)	332.00		2006

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2007, through July 1, 2008. The CFR volume issued as of July 1, 2007 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

¹⁰ No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.