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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1780

RIN 0572–AC11

Amending the Water and Waste Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the Agency, is amending its regulations to administer the Water and Waste Loan and Grant Programs. This action implements provisions of the 2008 Farm Bill for interest rates on direct loans and modifies the interest rate structure currently being used for the direct loan program. Interest rates on loans subject to 5 or 7 percent interest rate limitations (poverty and intermediate rates, respectively) will adjust with changes in the market rate. The poverty and intermediate interest rates will be established at rates equal to a percentage of current market yields for outstanding municipal obligations. The intended effect of the amendment is to make part 1780 current with statutory authority. No adverse comments are expected.

DATES: This rule will become effective February 20, 2009 without further action unless the Agency receives written adverse comments or written notices of intent to submit adverse comments on or before February 5, 2009. If the Agency receives adverse comments or notices, the Agency will publish a timely notice in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a postmark or equivalent no later than February 5, 2009.

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

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* In the ''Search Documents'' box, enter RUS-08-Water-0005, check the box under the Search box labeled ''Select to find documents accepting comments or submissions'', and click on the GO>> key. To submit a comment, choose ''Send a comment or submission'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form''.) 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 ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250–1522.

Other Information: Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water and Environmental Programs, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 2229 South Building, Washington, DC 20250–1570. Telephone: (202) 720–9589; Fax: (202) 690–0649; e-mail: *cheryl.francis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review.

E-Government Act Compliance

The Agency 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the water and waste loan and grant program is 10.760, Water and Waste Disposal Systems for Rural Communities. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at *http://www.cfda.gov.* The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's on-line bookstore at *http://bookstore.gpo.gov.*

Executive Order 12372

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion. They also involve minimal procedural matters on other agreements already negotiated.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0121 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

The water and waste loan and grant program is authorized by the Consolidated Farm and Rural Development Act (CONACT), (7 U.S.C. 1921 *et seq.*), as amended. The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less.

The direct loan program has a three-tier interest rate structure, commonly known as the poverty, intermediate, and market rates. The poverty and intermediate rates are available to customers least able to afford high interest rates. The poverty rate should be the lowest rate. However, the market rate was lower than the poverty rate (inverted rates) 11 out of 23 quarters from fiscal year 2003 through 2008. The inverted rates meant that the customers eligible for poverty and intermediate rate loans would repay their loans at rates higher than those that the market rate customers would pay. The inverted rates were inconsistent with section 307(a)(3)(A) of the CONACT, which stipulated that interest rates on loans be lower than the current market yield for outstanding municipal obligations.

The Food, Conservation and Energy Act of 2008 (Farm Bill) (Pub. L. 110–234) amends section 307(a)(3) of the CONACT (7 U.S.C. 1927(a)(3)). The amendments ensure that the poverty and intermediate rates are tied to the market rate. As percentages of the market rate, they will always be lower than the market rate. The poverty rate is set at 60 percent of the market rate, and the intermediate rate is set at 80 percent of the market rate. This interest rate change applies to loans approved after May 22, 2008. The change does not apply to a loan for a specific project that has been approved, but not closed on or before May 22, 2008. The interest rates of those loans will be determined by the rate structure that existed before the enactment of the Farm Bill. To conform to the Farm Bill's provisions, the water and waste loan and grant regulation, 7 CFR Part 1780, is being amended.

The interest rate changes will provide for a tiered interest rate structure, providing for the lowest interest rates to the lowest income communities. The new rate structure will allow the Agency to provide the neediest communities with financial assistance that will result in reasonable user costs for their users.

The poverty and intermediate interest rates have statutory limitations, established by the CONACT in section 307(a)(3). The poverty rate cannot exceed five percent, and the intermediate rate cannot exceed seven percent. As explained above, the market rate cannot exceed the current market yield for outstanding municipal obligations in accordance with the Omnibus Reconciliation Act of 1981. Regardless of whether the interest rates must be determined by the approval date of a loan—on or before May 22, 2008, or on or after May 23, 2008—these statutory limitations are in effect.

Loans approved at each level of interest rates must meet certain requirements under the water and waste regulation. All loans approved at the poverty rate must comply with the following conditions:

(1) The primary loan purpose will be to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards, and

(2) The median household income of the service area is below the poverty level for a family of four, or below 80 percent of the statewide nonmetropolitan median household income.

The intermediate interest rate applies to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State. The market rate applies to all loans that do not qualify for a poverty or intermediate interest rate.

The three-tier interest rate structure existed on May 22 as follows:

(1) Poverty Interest Rate. The poverty rate was set at 4.500 percent regardless of fluctuations in the market rate, subject to the statutory limit of five percent.

(2) Intermediate Interest Rate. The intermediate rate was set at one-half of the difference of the poverty rate and the market rate.

(3) The market interest rate is based on the 11–Bond Index, published by Bond Buyer for general obligation bonds. The calculation uses the average yield of the four weeks prior to the first Friday of the last month before the beginning of a quarter.

The poverty and intermediate interest rates will be determined based on the approval date of the loan under amendments to the water and waste regulation. For a loan for a specific project that has been approved, but not closed on or before May 22, the rate structure in effect at that time will determine the rates. For loans approved on or after May 23, 2008, the percentage of market rate will be used to determine the poverty and intermediate interest rates.

The following table summarizes the interest rates:

	On or before May 22, 2008	On or after May 23, 2008	Limitations
Poverty Rate	4.50%	60% of market rate	5.00%.
Intermediate Rate	4.50% + 0.5 (Market Rate less Poverty Rate).	80% of market rate	7.00%.
Market Rate	Average of 11 Bond Index for the 4 weeks prior to the first Friday before the beginning of the new quarter.	Average of 11 Bond Index for the 4 weeks prior to the first Friday before the beginning of the new quarter.	Less than the current market yield for outstanding municipal obligations.

These amendments are not published for proposed rulemaking because they merely reflect changes in statutory authority enacted by the Farm Bill. They make only minor technical corrections to the regulations, which do not involve matters of agency discretion. The Farm Bill leaves no discretion to the agency for setting interest rates. Notice and public comment, therefore, are impractical, unnecessary, and contrary to the public interest.

List of Subjects in 7 CFR Part 1780

Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

■ For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 1. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

■ 2. Amend § 1780.13 to add paragraph (a)(3) and to revise the introductory text of paragraph (b) and (c) to read as follows:

§ 1780.13 Rates and terms.

(a) * * *

(3) For a loan for a specific project that has been approved, but not closed on or before May 22, 2008, the rate structure in effect at that time will determine the interest rates. For loans approved on or after May 23, 2008, a percentage of the market rate will be used to determine the poverty and intermediate interest rates.

(b) *Poverty rate.* The poverty interest rate will not exceed 5 per centum per annum. Loans approved on or after May 23, 2008, will have the poverty interest rate set at 60 percent of the market rate. All poverty rate loans must comply with the following conditions:

* * * * *

(c) *Intermediate rate.* The intermediate interest rate will not exceed 7 percent per annum. For a loan for a specific project that has been approved, but not closed on or before May 22, 2008, the intermediate rate is the poverty rate plus one-half of the difference between the poverty rate and the market rate, not to exceed 7 percent per annum. Loans approved on or after May 23, 2008, will have the intermediate interest rate set at 80 percent of the market rate. The intermediate interest rate will apply to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State.

* * * * *

Dated: October 20, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–31255 Filed 1–5–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 245 and 299

[CIS No. 2134–01; DHS Docket No. USCIS–2006–0067]

RIN 1615–AA60

Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim final rule; Correction.

SUMMARY: With this amendment, the Department of Homeland Security (DHS) corrects an inadvertent error that was made in the Adjustment of Status to Lawful Permanent Resident for Aliens in T and U Nonimmigrant Status interim rule published in the **Federal Register** on December 12, 2008, at 73 FR 75540.

DATES: This rule is effective January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Laura Dawkins, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Second Floor, Washington, DC 20529–2140, telephone (202) 272–8350.

SUPPLEMENTARY INFORMATION:

Need for Correction

On December 12, 2008, the Department of Homeland Security published an interim rule in the **Federal Register** at 73 FR 75540 to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to lawful permanent resident. At 8 CFR 245.24 DHS inadvertently:

- Ended the sentence in paragraph (d)(9) with a ''**:**'' instead of a ''**;**'',
- Omitted the word ''facts'' immediately after the word ''specific'' at the end of paragraph (d)(9), and
- Ended the sentence in paragraph (d)(10) with a ''period'' rather than a ''; and''.

Correction of Publication

■ Accordingly, the publication on December 12, 2008, at 73 FR 75540 of the interim final rule that was the subject of FR Doc. E8–29277 is corrected as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

§ 245.24 [Corrected]

■ 1. On page 75561, in the second column, at the end of paragraph (d)(9), revise the term ''by specific:'' to read: ''by specific facts;''.

■ 2. On page 75561, in the second column, at the end of paragraph (d)(10), remove the ''.'' and add a ''; and'' in its place.

Dated: December 30, 2008.

Michael Aytes,

Acting Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. E8–31380 Filed 1–5–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30644; Amdt. No. 478]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, January 15, 2008.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125), *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace Navigation (air).

Issued in Washington, DC on December 19, 2008.

John M. Allen,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, January 15, 2008.

PART 95—IFR ALTITUDES [AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 478 effective date January 15, 2009]

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
Puerto Rico Routes—Route 010 Is Amended To Read in Part		
PONCE, PR VOR/DME	KYAAK,PR FIX	6000
KYAAK, PR FIX	ALASK, PR FIX	6000
§ 95.6001 Victor Routes—U.S.		
§ 95.6002 VOR Federal Airway V2 Is Amended To Read in Part		
U.S. CANADIAN BORDER	BUFFALO, NY VOR/DME	*3000
*2400—MOCA		
#BUFFALO, NY VOR/DME	ROCHESTER, NY VOR/DME	2800
#R–083 UNUSABLE BELOW 11000		
ROCHESTER, NY VOR/DME	MAGEN, NY FIX	2300
MAGEN, NY FIX	*KONDO, NY FIX	2300
*4800—MRA		
*KONDO, NY FIX	**WIFFY, NY FIX	2300
*4800—MRA		
**3000—MRA		
*WIFFY, NY FIX	SYRACUSE, NY VORTAC	2300

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 478 effective date January 15, 2009]

From	To	MEA
*3000—MRA		
§ 95.6007 VOR Federal Airway V7 Is Amended To Read in Part		
WIREGRASS, AL VORTAC	CLIOS, AL FIX	2200
CLIOS, AL FIX	BANBI, AL FIX	*2400
*2400—GNSS MEA		
BANBI, AL FIX	MONTGOMERY, AL VORTAC	2400
§ 95.6016 VOR Federal Airway V16 Is Amended To Read in Part		
WINK, TX VORTAC	GOMIT, TX FIX	5500
GOMIT, TX FIX	PIZON, TX FIX	5000
PIZON, TX FIX	MERGE, TX FIX	*7000
*4400—MOCA		
MERGE, TX FIX	BIG SPRING, TX VORTAC	4400
§ 95.6020 VOR Federal Airway V20 Is Amended To Read In Part		
PALACIOS, TX VORTAC	*MAGUS, TX FIX	1800
*3000—MRA		
*MAGUS, TX FIX	KEEDS, TX FIX	1700
*3000—MRA		
§ 95.6031 VOR Federal Airway V31 Is Amended To Read in Part		
GIBBE, NY FIX	BEEPS, NY FIX	3500
BEEPS, NY FIX	ROCHESTER, NY VOR/DME	4000
ROCHESTER, NY VOR/DME	TORONTO, CA VOR/DME	4000
§ 95.6034 VOR Federal Airway V34 Is Amended To Read in Part		
ROCHESTER, NY VOR/DME	HANCOCK, NY VOR/DME	4000
§ 95.6037 VOR Federal Airway V37 Is Amended To Read in Part		
SAVANNAH, GA VORTAC	ALLENDALE, SC VOR	*6000
*1600—MOCA		
*4000—GNSS MEA		
§ 95.6043 VOR Federal Airway V43 Is Amended To Read in Part		
U.S. CANADIAN BORDER	BUFFALO, NY VOR/DME	*3000
*2400—MOCA		
§ 95.6077 VOR Federal Airway V77 Is Amended To Read in Part		
HEYDN, KS FIX	TOPEKA, KS VORTAC	3700
§ 95.6078 VOR Federal Airway V78 Is Amended To Read in Part		
WATERTOWN, SD VORTAC	CLAPS, MN FIX	*5500
*3300—MOCA		
§ 95.6093 VOR Federal Airway V93 Is Amended To Read in Part		
GIDEC, PA FIX	WILKES-BARRE, PA VORTAC	4000
BRNNS, ME FIX	BANGOR, ME VORTAC	3000
§ 95.6105 VOR Federal Airway V105 Is Amended To Read in Part		
KARLO, AZ FIX	DRAKE, AZ VORTAC	*12000
*10000—MOCA		
*10000—GNSS MEA		
§ 95.6119 VOR Federal Airway V119 Is Amended To Read in Part		
GENESEO, NY VOR/DME	ROCHESTER, NY VOR/DME	2800
§ 95.6140 VOR Federal Airway V140 Is Amended To Read in Part		
KINGFISHER, OK VORTAC	LASTS, OK FIX	3000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 478 effective date January 15, 2009]

From	To	MEA
LASTS, OK FIX *3100—MOCA	IBAAH, OK FIX	*4500
IBAAH, OK FIX	TULSA, OK VORTAC	3200
§ 95.6147 VOR Federal Airway V147 Is Amended To Read in Part		
GENESEO, NY VOR/DME	ROCHESTER, NY VOR/DME	2800
§ 95.6149 VOR Federal Airway V149 Is Amended To Read in Part		
MAZIE, PA FIX *3000—GNSS MEA #R–157 UNUSABLE	#ALLENTOWN, PA VORTAC	*6000
§ 95.6163 VOR Federal Airway V163 Is Amended To Read in Part		
LAMPASAS, TX VORTAC *4000—MRA **2700—MOCA	*TENAT, TX FIX	**3500
*TENAT, TX FIX *4000—MRA **2700—MOCA	GLEN ROSE, TX VORTAC	**3500
§ 95.6168 VOR Federal Airway V168 Is Amended To Read in Part		
MILER, AL FIX *2400—MOCA *3000—GNSS MEA	EFORD, AL FIX	*3000
§ 95.6170 VOR Federal Airway V170 Is Amended To Read in Part		
#DUPONT, DE VORTAC *2000—GNSS MEA #R–233 UNUSABLE BEYOND 22NM.	KERNO, MD FIX	*2000
KERNO, MD FIX *1500—MOCA *2500—GNSS MEA	SWANN, MD FIX	*2500
§ 95.6174 VOR Federal Airway V174 Is Amended To Read in Part		
YORK, KY VORTAC	HENDERSON, WV VORTAC	3300
§ 95.6181 VOR Federal Airway V181 Is Amended To Read in Part		
#SIOUX FALLS, SD VORTAC *5000—MRA **3500—MOCA #R–340 UNUSABLE BELOW 4000	*OBITT, SD FIX	**4000
*OBITT, SD FIX *5000—MRA **3200—MOCA	WATERTOWN, SD VORTAC	**4000
§ 95.6214 VOR Federal Airway V214 Is Amended To Read in Part		
SWANN, MD FIX *1500—MOCA *2500—GNSS MEA	KERNO, MD FIX	*2500
KERNO, MD FIX *2000—GNSS MEA #R–233 UNUSABLE BEYOND 22NM	#DUPONT, DE VORTAC	*2000
§ 95.6255 VOR Federal Airway V255 Is Amended To Read in Part		
GARDEN CITY, KS VORTAC	HAYS, KS VORTAC	4600
§ 95.6280 VOR Federal Airway V280 Is Amended To Read in Part		
HEYDN, KS FIX	TOPEKA, KS VORTAC	3700
§ 95.6327 VOR Federal Airway V327 Is Amended To Read in Part		
RADOM, AZ FIX	*FERER, AZ FIX	

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 478 effective date January 15, 2009]

From	To	MEA
	N BND	**12000
	S BND	**11000
*11000—MCA FERER, AZ FIX, S BND		
**8400—MOCA		
**9000—GNSS MEA		
FERER, AZ FIX	OATES, AZ FIX	**12000
**9400—MOCA		
**10000—GNSS MEA		
§ 95.6417 VOR Federal Airway V417 Is Amended To Read in Part		
COLLIERS, SC VORTAC	ALLENDALE, SC VOR	3000
ALLENDALE, SC VOR	*STOAS, SC FIX	**6000
*6000—MCA STOAS, SC FIX, W BND		
**2000—GNSS MEA		
STOAS, SC FIX	CHARLESTON, SC VORTAC	2000
§ 95.6433 VOR Federal Airway V433 Is Amended To Read in Part		
SWANN, MD FIX	KERNO, MD FIX	*2500
*1500—MOCA		
*2500—GNSS MEA		
KERNO, MD FIX	#DUPONT, DE VORTAC	*2000
*2000—GNSS MEA		
#R–233 UNUSABLE BEYOND 22 NM		
§ 95.6445 VOR Federal Airway V445 Is Amended To Read in Part		
SWANN, MD FIX	KERNO, MD FIX	*2500
*1500—MOCA		
*2500—GNSS MEA		
KERNO, MD FIX	#DUPONT, DE VORTAC	*2000
*2000—GNSS MEA		
#R–233 UNUSABLE BEYOND 22 NM		
§ 95.6483 VOR Federal Airway V483 Is Amended To Read in Part		
#SYRACUSE, NY VORTAC	*LYSAN, NY FIX	2300
*3000—MRA		
#R–294 UNUSABLE BEYOND 16 NM		
*LYSAN, NY FIX	DINES, NY FIX	**2300
*3000—MRA		
**3000—GNSS MEA		
DINES, NY FIX	ROCHESTER, NY VOR/DME	2300
§ 95.6510 VOR Federal Airway V510 Is Amended To Read in Part		
#BUFFALO, NY VOR/DME	*EHMAN, NY FIX	**11000
*11000—MCA EHMAN, NY FIX, SW BND		
**3000—GNSS MEA		
#R–053 UNUSABLE BELOW 11000		
EHMAN, NY FIX	ROCHESTER, NY VOR/DME	2400
§ 95.6521 VOR Federal Airway V521 Is Amended To Read in Part		
#WIREGRASS, AL VORTAC	CLIOS, AL FIX	2200
#R–331 NA BEYOND CLIOS		
CLIOS, AL FIX	BANBI, AL FIX	*2400
*2400—GNSS MEA		
BANBI, AL FIX	MONTGOMERY, AL VORTAC	2400
§ 95.6562 VOR Federal Airway V562 Is Amended To Read in Part		
RADOM, AZ FIX	*FERER, AZ FIX	.....
	N BND	**12000
	S BND	**11000
*11000—MCA FERER, AZ FIX, S BND		
**8400—MOCA		
**9000—GNSS MEA		

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 478 effective date January 15, 2009]

From	To	MEA
§ 95.6567 VOR Federal Airway V567 Is Amended To Read in Part		
RADOM, AZ FIX	*FERER, AZ FIX	
	N BND	**12000
	S BND	**11000
*14000—MCA FERER, AZ FIX, NE BND *11000—MCA FERER, AZ FIX, S BND **8400—MOCA **9000—GNSS MEA		
§ 95.6581 VOR Federal Airway V581 Is Amended To Read in Part		
ST PETERSBURG, FL VORTAC	TUMPY, FL FIX	2000
TUMPY, FL FIX	DADES, FL FIX	*5000
*2000—GNSS MEA		
DADES, FL FIX	OCALA, FL VORTAC	2000

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7213 Jet Route J213 Is Amended To Read in Part**			
ARMEL, VA VORTAC	BECKLEY, WV VORTAC	*18000	45000
*18000—GNSS MEA #R–072 UNUSABLE			
§ 95.7522 Jet Route J522 Is Amended To Read in Part			
U.S. CANADIAN BORDER	ROCHESTER, NY VOR/DME	*18000	35000
*18000—GNSS MEA			

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points			
Airway Segment V20 Is Amended To Add Changeover Point			
MAGUS, TX FIX	HOBBY, TX VOR/DME	35	MAGUS
Airway Segment Is Amended To Delete Changeover Point			
PALACIOS, TX VORTAC	HOBBY, TX VOR/DME	41	PALACIOS
Airway Segment V7 Is Amended To Add Changeover Point			
SEMINOLE, FL VORTAC	WIREGRASS, AL VORTAC	52	SEMINOLE

[FR Doc. E8–31442 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1855–AA05

[DOCKET ID ED–2008–OPEPD–0002]

Family Educational Rights and Privacy

AGENCY: Office of Planning, Evaluation, and Policy Development, Department of Education.

ACTION: Final rule; correction.

SUMMARY: The Department of Education is correcting a final regulation that was published in the **Federal Register** on December 9, 2008 (73 FR 74806).

DATES: Effective January 8, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W243, Washington, DC 20202–8250. *Telephone:* (202) 260–3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION: *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: *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: *www.gpoaccess.gov/nara/index.html.*

In FR Doc. E8–28864 appearing on page 74806 in the **Federal Register** on December 9, 2008, the following corrections are made:

§ 99.31 [Corrected]

1. On page 74852, in the second column, in § 99.31, add ''* * * * *'' after the note to paragraph (a)(2).

2. On page 74853, in the first column, in § 99.31, paragraph (d) is corrected to add, at the end of the sentence, before the ''.'', ''except for parties under paragraph (a)(12) of this section''.

§ 99.67 [Corrected]

3. On page 74855, in the third column, in § 99.67, in amendment 17, the instruction is corrected to read ''Section 99.67 is amended by revising paragraph (a), introductory text, to read as follows:''

Dated: December 31, 2008.

Raymond Simon,

Deputy Secretary of Education.

[FR Doc. E8–31461 Filed 1–5–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
Unincorporated Areas of Morrow County, Ohio Docket No.: FEMA–B–7784				
Ohio	Unincorporated Areas of Morrow County.	Whetstone Creek	1290 feet downstream of Cardington Road.	+1050
			1570 feet downstream of U.S. Route 42 ..	+1068

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified

Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Morrow County

Maps are available for inspection at 80 North Walnut Street, Suite C, Mt. Gilead, OH 43338.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Bay County, Florida, and Incorporated Areas Docket No.: FEMA–B–7773			
Beefwood Branch	At the confluence with Bayou George	+24	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 19,900 feet upstream of the confluence with Bayou George.	+62	
Big Branch	At the confluence with Bayou George	+27	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 24,800 feet upstream of the confluence with Bayou George.	+60	
Dry Branch	Approximately 615 feet upstream of the confluence with Bayou George.	+10	Town of Cedar Grove, Unincorporated Areas of Bay County.
	Approximately 800 feet downstream of Highway 231	+11	
Hammock Branch	At the confluence with Bayou George	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 25,000 feet upstream of the confluence with Bayou George.	+50	
Island Branch	At the confluence with Bayou George	+30	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 16,900 feet upstream of the confluence with Bayou George.	+59	
Unnamed Tributary 1 to Bayou George.	Approximately 650 feet upstream of the confluence with Bayou George.	+16	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 1,400 feet upstream of Nadine Road	+50	
Unnamed Tributary 10 to Bayou George.	At the confluence with Bayou George	+37	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 3,900 feet upstream of the confluence with Bayou George.	+50	
Unnamed Tributary 11 to Bayou George.	At the confluence with Bayou George	+57	Unincorporated Areas of Bay County.
	Approximately 8,600 feet upstream of the confluence with Bayou George.	+64	
Unnamed Tributary 2 to Bayou George.	Approximately 420 feet upstream of the confluence with Bayou George.	+25	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 2,170 feet upstream of John Pitts Road	+47	
Unnamed Tributary 3 to Bayou George.	Approximately 400 feet upstream of the confluence with Bayou George.	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 5,500 feet upstream of John Pitts Road	+56	
Unnamed Tributary 4 to Bayou George.	Approximately 315 feet upstream of the confluence with Bayou George.	+31	Town of Cedar Grove, City of Panama City, Unincorporated Areas of Bay County.
	Approximately 7,780 feet upstream of John Pitts Road	+56	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Unnamed Tributary 5 to Bayou George.	Approximately 560 feet upstream of the confluence with Bayou George.	+25	Town of Cedar Grove, Unincorporated Areas of Bay County.
	Approximately 1,200 feet upstream of Bayou George Drive.	+43	
Unnamed Tributary 6 to Bayou George.	Approximately 125 feet upstream of the confluence with Bayou George.	+38	Unincorporated Areas of Bay County.
	Approximately 1,400 feet upstream of the confluence with Bayou George.	+38	
Unnamed Tributary 7 to Bayou George.	At John Pitts Road	+19	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 7,500 feet upstream of Old Majette Tower Road.	+54	
Unnamed Tributary 8 to Bayou George.	At the confluence with Bayou George	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 6,700 feet upstream of the confluence with Bayou George.	+46	
Unnamed Tributary 9 to Bayou George.	At the confluence with Bayou George	+24	City of Panama City.
	Approximately 1,800 feet upstream of the confluence with Bayou George.	+35	
Water Branch	At the confluence with Bayou George	+47	Unincorporated Areas of Bay County.
	Approximately 22,000 feet upstream of the confluence with Bayou George.	+60	
White Bucky Branch	Approximately 900 feet upstream of the confluence with Bayou George.	+26	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 9,000 feet upstream of the confluence with Bayou George.	+54	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Panama City

Maps are available for inspection at Panama City City Hall, Engineering Department, 9 Harrison Avenue, Panama City, FL.

Town of Cedar Grove

Maps are available for inspection at Cedar Grove Town Hall, 2728 East 14th Street, Cedar Grove, FL.

Unincorporated Areas of Bay County

Maps are available for inspection at Bay County Planning and Zoning Department, 707 Jenks Avenue, Suite B, Panama City, FL.

Habersham County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7771

Soquee River Tributary	Approximately 770 feet upstream of confluence with Soquee River.	+1308	City of Clarkesville.
	Approximately 380 feet downstream of State Highway 385/Alternate 17/U.S. Highway 441 Business/Grant Street.	+1308	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Clarkesville

Maps are available for inspection at City Hall, 210 East Water Street, Clarkesville, GA 30523.

Butler County, Kansas, and Incorporated Areas
Docket No.: FEMA–B–7781

Walnut River	Approximately 850 feet downstream of SW 220th Street	*1181	City of Douglas.
	Approximately 1000 feet upstream of SW 210th Street	*1190	
Whitewater River	Approximately 1000 feet upstream of State Highway 254	*1254	City of Towanda.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1320 feet upstream of State Highway 254	*1264	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Douglas

Maps are available for inspection at City Hall, 322 S. Forrest, Douglass, KS 67039.

City of Towanda

Maps are available for inspection at City Hall, 110 S. 3rd Street, Towanda, KS 67114.

Benton County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–7759

Lake of the Ozarks (Osage River and tributaries).	At confluence with Big Buffalo Creek	+666	City of Warsaw, Unincorporated Areas of Benton County.
	At confluence with Cole Camp Creek	+667	
	At U.S. Highway 65	+669	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Warsaw

Maps are available for inspection at City Office, 181 W. Harrison, Warsaw, MO 65355.

Unincorporated Areas of Benton County

Maps are available for inspection at County Office, 316 Van Buren, Warsaw, MO 65355.

Madison County, North Carolina and Incorporated Areas
Docket No.: FEMA–D–7826

Anderson Branch	At the confluence with French Broad River	+1,535	Unincorporated Areas of Madison County.
	Approximately 1.5 miles upstream of the confluence with French Broad River.	+1,954	
Banjo Branch	At the confluence with Gabriel Creek	+2,198	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 800 feet upstream of Forest Street (State Road 1356).	+2,401	
Barrett Branch	At the confluence with Little Sandymush Creek	+2,199	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence with Little Sandymush Creek.	+2,224	
Big Branch	At the confluence with Little Ivy Creek	+2,011	Unincorporated Areas of Madison County.
	Approximately 230 feet upstream of I–26/U.S. 19	+2,223	
Big Branch Tributary 2	At the confluence with Big Branch	+2,118	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 140 feet upstream of Mountain View Road	+2,284	
Big Laurel Creek	Approximately 400 feet upstream of the confluence with French Broad River.	+1,393	Unincorporated Areas of Madison County.
	Approximately 1.7 miles upstream of Watershed Road (State Road 1505).	+4,301	
Big Pine Creek	Approximately 200 feet upstream of the confluence with French Broad River.	+1,526	Unincorporated Areas of Madison County.
	At the confluence of North Fork Big Pine Creek and South Fork Big Pine Creek.	+2,481	
Brush Creek	Approximately 300 feet upstream of the confluence with French Broad River.	+1,514	Unincorporated Areas of Madison County.
	Approximately 150 feet upstream of Upper Brush Creek Road (State Road 1143).	+2,075	
Bull Creek	At the confluence with Ivy Creek	+1,817	Unincorporated Areas of Madison County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	At the confluence of East Fork Bull Creek and West Fork Bull Creek.	+2,020	
California Creek	At the confluence with Little Ivy Creek and Paint Creek	+2,099	Unincorporated Areas of Madison County.
	Approximately 600 feet upstream of the confluence of Holcombe Branch.	+2,665	
Crooked Creek	At the confluence with Middle Fork California Creek	+2,226	Unincorporated Areas of Madison County.
	Approximately 800 feet upstream of State Road 1526	+2,500	
Doggett Branch	At the confluence with Little Sandymush Creek	+2,291	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of NC Route 63	+2,392	
East Fork Bull Creek	At the confluence with Bull Creek and West Fork Bull Creek.	+2,020	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of East Fork Road (State Road 1364).	+2,073	
Fall Branch	At the confluence with Little Sandymush Creek	+2,248	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence with Little Sandymush Creek.	+2,281	
Friezeland Creek	At the confluence with Spring Creek	+2,426	Unincorporated Areas of Madison County.
	Approximately 1.2 miles upstream of the confluence with Spring Creek.	+2,608	
Frisby Branch	Approximately 250 feet upstream of the confluence with French Broad River.	+1,646	Town of Marshall.
	Approximately 1.2 miles upstream of the confluence with French Broad River.	+1,973	
Gabriel Creek	At the confluence with Ivy Creek	+1,899	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 0.8 mile upstream of Bruce Road	+2,879	
Gabriel Creek Tributary 2	At the confluence with Gabriel Creek	+2,041	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 300 feet upstream of Woodhaven Road	+2,192	
Gilbert Branch	At the confluence with Little Sandymush Creek	+2,282	Unincorporated Areas of Madison County.
	Approximately 1,200 feet upstream of the confluence with Little Sandymush Creek.	+2,315	
Holcombe Branch	At the confluence with California Creek	+2,633	Unincorporated Areas of Madison County.
	Approximately 0.6 mile upstream of the confluence with California Creek.	+2,804	
Holland Creek	At the confluence with Ivy Gap Branch and Middle Fork California Creek.	+2,395	Unincorporated Areas of Madison County.
	Approximately 325 feet upstream of the confluence with Ivy Gap Branch and Middle Fork California Creek.	+2,412	
Ivy Creek	Approximately 400 feet upstream of the French Broad River.	+1,681	Unincorporated Areas of Madison County.
	Approximately 250 feet upstream of the confluence of Little Ivy Creek.	+1,971	
Ivy Gap Branch	At the confluence with Holland Creek and Middle Fork California Creek.	+2,395	Unincorporated Areas of Madison County.
	Approximately 270 feet upstream of the confluence with Holland Creek and Middle Fork California Creek.	+2,405	
Laurel Branch	At the confluence with Bull Creek	+1,844	Unincorporated Areas of Madison County.
	Approximately 350 feet upstream of Bend of Ivy Road (State Road 1576).	+1,877	
Little Ivy Creek	At the confluence with Ivy Creek	+1,970	Unincorporated Areas of Madison County.
	At the confluence of Paint Fork and California Creek	+2,099	
Little Laurel Creek	At the confluence with Shelton Laurel Creek	+1,688	Unincorporated Areas of Madison County.
	Approximately 250 feet upstream of the confluence of Shelton Branch.	+1,805	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Little Sandymush Creek	At the confluence with Sandymush Creek	+2,038	Unincorporated Areas of Madison County.
	Approximately 0.4 mile upstream of the confluence of Doggett Branch.	+2,355	
Meadow Fork of Spring Creek	At the confluence with Spring Creek	+1,855	Unincorporated Areas of Madison County.
	Approximately 0.4 mile upstream of Keenerville Church Road.	+3,189	
Middle Fork California Creek	At the confluence with California Creek	+2,106	Unincorporated Areas of Madison County.
	Approximately 50 feet downstream of the confluence of Ivy Gap Branch and Holland Creek.	+2,394	
Morrow Branch	At the confluence with Little Sandymush Creek	+2,127	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of Austin Branch Road (State Road 1102).	+2,164	
North Fork Big Pine Creek	At the confluence with South Fork Big Pine Creek and Big Pine Creek.	+2,481	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of North Fork Road (State Road 1159).	+2,519	
Nowhere Branch	At the confluence with Bull Creek	+1,866	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence of Bull Creek.	+1,897	
Paint Fork	At the confluence with California Creek and Little Ivy Creek.	+2,099	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence of Ray Branch.	+2,403	
Polly Branch	At the confluence with Middle Fork California Creek	+2,323	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence with Middle Fork California Creek.	+2,335	
Ponder Creek	At the confluence with Middle Fork California Creek	+2,381	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence with Middle Fork California Creek.	+2,399	
Puncheon Fork	At the confluence with Big Laurel Creek	+2,996	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of Streets Gap Road (State Road 1502).	+4,052	
Ray Branch	At the confluence with Paint Fork	+2,377	Unincorporated Areas of Madison County.
	Approximately 1,200 feet upstream of the confluence with Paint Fork.	+2,402	
Sandymush Creek	Approximately 500 feet upstream of the confluence with French Broad River.	+1,728	Unincorporated Areas of Madison County.
	Approximately 100 feet upstream of the confluence with Little Sandymush Creek.	+2,041	
Shake Rag Branch	At the confluence with Middle Fork California Creek	+2,267	Unincorporated Areas of Madison County.
	Approximately 600 feet upstream of the confluence with Middle Fork California Creek.	+2,285	
Shelton Branch	At the confluence with Little Laurel Creek	+1,804	Unincorporated Areas of Madison County.
	Approximately 0.7 mile upstream of the confluence with Little Laurel Creek.	+1,910	
Shelton Laurel Creek	At the confluence with Big Laurel Creek	+1,629	Unincorporated Areas of Madison County.
	At the confluence of Whiteoak Flats Branch	+2,339	
South Fork Big Pine Creek	At the confluence with North Fork Big Pine Creek and Big Pine Creek.	+2,481	Unincorporated Areas of Madison County.
	Approximately 1,400 feet upstream of the confluence with North Fork Big Pine Creek and Big Pine Creek.	+2,513	
Spring Creek	Approximately 1,500 feet upstream of the confluence with French Broad River.	+1,325	Unincorporated Areas of Madison County, Town of Hot Springs.
	At the confluence of Bear Branch	+2,825	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Sprinkle Creek	At the confluence with California Creek	+2,353	Unincorporated Areas of Madison County.
	Approximately 1.0 mile upstream of Sprinkle Creek Road (State Road 1349).	+3,347	
Terry Fork	At the confluence with Paint Fork	+2,195	Unincorporated Areas of Madison County.
	Approximately 2,000 feet upstream of Paint Fork	+2,220	
Tilden Metcalf Creek	At the confluence with Paint Fork	+2,261	Unincorporated Areas of Madison County.
	Approximately 100 feet upstream of Metcalf Creek Loop Road (State Road 1531).	+2,510	
West Fork Bull Creek	At the confluence with Bull Creek and East Bull Creek	+2,020	Unincorporated Areas of Madison County.
	Approximately 350 feet downstream of the confluence of Cargle Branch.	+2,194	
Whiteoak Creek	At the confluence with Ivy Creek	+1,852	Unincorporated Areas of Madison County.
	Approximately 0.6 mile upstream of Thomas Road (State Road 1567).	+2,182	
Whiteoak Creek Tributary 2	At the confluence with Whiteoak Creek	+2,026	Unincorporated Areas of Madison County.
	Approximately 1,100 feet upstream of the confluence with Whiteoak Creek.	+2,043	
Whiteoak Creek Tributary 4	At the confluence with Whiteoak Creek	+2,096	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of the confluence with Whiteoak Creek.	+2,120	
Wille Metcalf Creek	At the confluence with Paint Fork	+2,243	Unincorporated Areas of Madison County.
	Approximately 1,100 feet upstream of Metcalf Creek Loop (State Road 1531).	+2,366	

Depth in feet above ground.
+ North American Vertical Datum.
* National Geodetic Vertical Datum.

ADDRESSES

Town of Hot Springs

Maps are available for inspection at Hot Springs Town Hall, 168 Bridge Street, Hot Springs, North Carolina.

Town of Mars Hill

Maps are available for inspection at Mars Hill Town Hall, 28 North Main Street, Mars Hill, North Carolina.

Town of Marshall

Maps are available for inspection at Marshall Town Hall, 45 North Main Street, Marshall, North Carolina.

Unincorporated Areas of Madison County

Maps are available for inspection at Madison County Planning and Zoning Office, 5707 U.S. Highway 25/70, Marshall, North Carolina.

Yancey County, North Carolina and Incorporated Areas
Docket No.: FEMA–B–7769

Bailey Branch	At the confluence with Pine Swamp Branch	+2,575	Unincorporated Areas of Yancey County.
	Approximately 1,740 feet upstream of the confluence with Pine Swamp Branch.	+2,637	
Bald Mountain Creek	At the confluence with Cane River	+2,294	Unincorporated Areas of Yancey County.
	Approximately 1,810 feet upstream of Bee Log Road (State Road 1408).	+2,467	
Big Crabtree Creek	The confluence with North Toe River	+2,411	Unincorporated Areas of Yancey County.
	Approximately 1.4 miles upstream of Seven Mile Ridge Road (State Road 1167).	+3,147	
Brown Creek	Approximately 300 feet upstream of the confluence with South Toe River.	+2,634	Unincorporated Areas of Yancey County.
	Approximately 1.2 miles upstream of Upper Browns Creek Road (State Road 1154).	+4,690	
Cane River	At the confluence with Nolichucky River and North Toe River.	+2,044	Unincorporated Areas of Yancey County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 60 feet downstream of the confluence of Mitchell Creek.	+3,157	
Cattail Creek	At Mountain Farm Road	+3,012	Unincorporated Areas of Yancey County.
	At the confluence of North Fork Cattail Creek and South Fork Cattail Creek.	+3,157	
Jacks Creek	At the confluence with North Toe River	+2,136	Unincorporated Areas of Yancey County.
	Approximately 60 feet upstream of Sheriff Anglin Road (State Road 1364).	+2,532	
Little Crabtree Creek	Approximately 450 feet downstream of Depot Street (State Road 1140).	+2,623	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 650 feet upstream of East Boulevard	+2,740	
McIntosh Branch	At the confluence with Pine Swamp Branch	+2,699	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 50 feet upstream of Van Kirk Lane	+2,751	
Mitchell Branch	At the confluence with Little Crabtree Creek	+2,705	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 260 feet upstream of Mitchell Branch (State Road 1373).	+2,751	
Nolichucky River	Approximately 550 feet downstream of the railroad	+1,981	Unincorporated Areas of Yancey County.
	At the confluence of Cane River and North Toe River	+2,044	
North Cox Creek	Approximately 220 feet upstream of the confluence with Cane River.	+2,149	Unincorporated Areas of Yancey County.
	Approximately 1.5 miles upstream of the confluence with Cane River.	+3,061	
North Fork Cattail Creek	At the confluence with Cattail Creek and South Fork Cattail Creek.	+3,157	Unincorporated Areas of Yancey County.
	Approximately 1.1 miles upstream of North Fork Road	+4,869	
North Toe River	At the confluence with Nolichucky River and Cane River	+2,044	Unincorporated Areas of Yancey County.
	At the Yancey/Mitchell County boundary	+2,411	
Pine Swamp Branch	At the confluence with Cane River	+2,553	Unincorporated Areas of Yancey County, Town of Burnsville.
	Approximately 1,770 feet upstream of Cherry Lane (State Road 1139).	+2,720	
Pine Swamp Branch	Approximately 1,770 feet upstream of Cherry Lane (State Road 1139).	#1	Town of Burnsville.
	Approximately 200 feet upstream of East Main Street	#1	
South Cox Creek	At the confluence with Jacks Creek	+2,420	Unincorporated Areas of Yancey County.
	Approximately 700 feet upstream of Coxes Creek Road (State Road 1354).	+2,791	
South Fork Cattail Creek	At the confluence with Cattail Creek and North Fork Cattail Creek.	+3,157	Unincorporated Areas of Yancey County.
	Approximately 0.5 mile upstream of Tennis Court Road	+3,739	
South Toe River	At the confluence with North Toe River	+2,356	Unincorporated Areas of Yancey County.
	Approximately 1,100 feet downstream of the confluence of Brown Creek.	+2,629	

Depth in feet above ground.
+ North American Vertical Datum.
* National Geodetic Vertical Datum.

ADDRESSES

Town of Burnsville

Maps are available for inspection at Town of Burnsville Courthouse, Mapping Department, 110 Town Square, Burnsville, North Carolina.

Unincorporated Areas of Yancey County

Maps are available for inspection at Yancey County Courthouse, Room 11, Burnsville, North Carolina.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Beadle County, South Dakota, and Incorporated Areas Docket No.: FEMA–B–7769			
James River	Just upstream of the Sanborn County and Beadle County line.	+1237	Unincorporated Areas of Beadle County, City of Huron.
	Just downstream of the Spink County and Beadle County line.	+1253	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Huron

Maps are available for inspection at 329 Wisconsin, PO Box 1369, Huron, SD 57350.

Unincorporated Areas of Beadle County

Maps are available for inspection at 400 3rd S.W., PO Box 25, Huron, SD 57350.

Collin County, Texas, and Incorporated Areas Docket No.: FEMA–B–7713			
Cottonwood Creek 1	Approximately 200 feet downstream from Oxbow Creek Lane.	*550	City of Allen, City of Mckinney, City of Parker, City of Plano, City of Celina.
	Approximately 600 feet upstream from Ash Lane	*712	
Doe Branch	Approximately 2,070 feet downstream from County Rd 51	*624	Unincorporated Areas of Jefferson County.
	County Road 94	*741	
East Fork Trinity River	Approximately 3,500 feet downstream from Union Pacific Railroad.	*524	City of Mckinney, City of Melissa.
	Approximately 1,600 feet upstream from County Road 279.	*570	
Muddy Creek (Upper Reach)	Approximately one mile downstream from FM 544	*487	Unincorporated Areas of Jefferson County, City of Wylie.
	Just upstream from Stinson Road	*569	
Rowlett Creek	McDermott Drive (FM 2170)	*606	Unincorporated Areas of Collin County, City of Allen.
	Approximately 3,000 feet upstream from Exchange Parkway.	*627	
Stewart Creek Tributary	Approximately 2,500 feet downstream from Fossil Ridge Drive.	*660	City of Frisco.
	Approximately 2,800 feet upstream from Woodstream Drive.	*718	
Watters Branch	Approximately 2,250 feet downstream from Bethany Drive	*585	City of Allen.
	State Hwy 121	*691	
West Rowlett Creek	Confluence with Rowlett Creek	*609	City of Allen, City of Plano.
	Approximately 1,000 feet downstream from State Hwy 121.	*633	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Allen

Maps are available for inspection at One Butler Circle, Allen, TX 75013.

City of Celina

Maps are available for inspection at City of Celina, 320 West Walnut, Celina, TX 75009.

City of Frisco

Maps are available for inspection at City of Frisco, 6891 Main Street, Frisco, TX 75034.

City of Lucas

Maps are available for inspection at 151 Country Club Road, Lucas, TX 75002.

City of McKinney

Maps are available for inspection at City of McKinney, 222 North Tennessee Street, McKinney, TX 75070.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

City of Melissa

Maps are available for inspection at City of Melissa, 109 U.S. Hwy 121, Melissa, TX 75454.

City of Parker

Maps are available for inspection at City of Parker, 5700 East Parker Road, Parker, TX 75002.

City of Plano

Maps are available for inspection at City of Plano, 1520 Avenue K, Plano, TX 75086.

City of Wylie

Maps are available for inspection at City of Wylie, 114 North Ballard Avenue, Wylie, TX 75098.

Collin County (Unincorporated Areas)

Maps are available for inspection at Collin County Department of Public Works, 210 South McDonald Street, McKinney, TX 75069.

Jefferson County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–7724

Koshkonong Creek	Just upstream of Rockdale Road	+795	Unincorporated Areas of Jefferson County.
	Approximately 1,200 feet upstream of Bridge Street	+843	
Maunesha River	Approximately 1,500 feet downstream of Highway 19	+830	City of Waterloo.
	Approximately 1,000 feet downstream of Highway 19	+830	
Unnamed Stream	Approximately 1,500 feet downstream of County Highway C.	+804	Unincorporated Areas of Jefferson County.
	Just downstream of County Highway C	+804	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Waterloo

Maps are available for inspection at City Hall, 136 North Monroe Street, Waterloo, WI 53594.

Jefferson County (Unincorporated Areas)

Maps are available for inspection at Jefferson County Courthouse, 320 South Main Street, Room 201, Jefferson, WI 53549.

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

Dated: December 18, 2008.

Michael K. Buckley,

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

[FR Doc. E8–31274 Filed 1–5–09; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 74, No. 3
Tuesday, January 6, 2009

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1780

RIN 0572–AC11

Amending the Water and Waste Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development or the Agency, is amending its regulations to administer the Water and Waste Loan and Grant Programs. This action implements provisions of the 2008 Farm Bill for interest rates on direct loans and modifies the interest rate structure currently being used for the direct loan program. Interest rates on loans subject to 5 or 7 percent interest rate limitations (poverty and intermediate rates, respectively) will adjust with changes in the market rate. The poverty and intermediate interest rates will be established at rates equal to a percentage of current market yields for outstanding municipal obligations. The intended effect is to make part 1780 current with statutory authority.

In the final rules section of the **Federal Register**, the Agency is publishing this action as a direct final rule without prior proposal because Rural Development views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule, and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by Rural Development or carry a postmark or equivalent no later than February 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* In the ''Search Documents'' box, enter RUS–08–Water–0005, check the box under the Search box labeled ''Select to find documents accepting comments or submissions,'' and click on the GO>> key. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form.'') 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 ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS 08–Water–0005.

Other Information: Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Cheryl Francis, Loan Specialist, Water and Environmental Programs, USDA Rural Development, STOP 1570, Room 2229 South Building, 1400 Independence Avenue, Washington, DC 20250–1570. *Telephone:* (202) 720–9589; FAX: (202) 690–0649; *e-mail*: *cheryl.francis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: See the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations direct final rule section of the **Federal Register** for the applicable Supplementary Information on this action.

Dated: December 30, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–31377 Filed 1–5–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0015]

RIN 1904–AB86

Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for Walk-In Coolers and Walk-In Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The Department of Energy (DOE) is initiating the rulemaking to consider establishing energy conservation standards for walk-in coolers and walk-in freezers. Accordingly, DOE will hold an informal public meeting to discuss and receive comments on its planned analytical approach and issues it will address in this rulemaking proceeding. DOE welcomes written comments from the public on our stated approach for this rulemaking. To inform stakeholders and to facilitate this process, DOE has prepared a Framework Document which details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comment. A copy of the Framework Document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/walkinrefrigeration_equipment.html.*

DATES: The Department will hold a public meeting on Wednesday, January 28, 2009, from 9 a.m. to 4 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., Wednesday, January 21, 2009. Written comments on the framework document are welcome, especially following the public meeting, and should be submitted by February 5, 2009.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Stakeholders may submit comments, identified by docket number EERE–2008–BT–STD–0015 and/or Regulation Identifier Number (RIN) 1904–AB86, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: WICF–2008–STD–0015@ee.doe.gov*. Include EERE–2008–BT–STD–0015 and/or RIN 1904–AB86 in the subject line of the message.
- *Mail:* Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Walk-In Coolers and Walk-In Freezers, EERE–2008–BT–STD–0015 and/or RIN 1904–AB86, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking found at the beginning of this notice.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Brenda Edwards first at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2192. *E-mail: Charles.Llenza@ee.doe.gov*.

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. *E-mail: Michael.Kido@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. *E-mail: Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act of 1975 (EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles.[1] Part A–1 of Title III (42 U.S.C. 6311–6317) establishes a similar program for ''Certain Industrial Equipment,'' including walk-in coolers and walk-in freezers, the subject of this rulemaking.[2]

More recently, EPCA was amended by the Energy Independence and Security Act of 2007 (EISA), Public Law 110–140. In particular, section 312(a) of EISA amends section 340 of EPCA by adding in new subsection 340(20) (42 U.S.C. 6311(20)), which defines walk-in coolers and walk-in freezers. In addition, section 312(b) of EISA amends section 342 of EPCA by adding new subsection 342(f)(1) (42 U.S.C. 6313(f)(1)), which establishes prescriptive standards for walk-in coolers and freezers manufactured on or after January 1, 2009. Section 312 of EISA amends section 342 of EPCA by adding a new subsection 342(f)(2) (42 U.S.C. 6313(f)(2)), which establishes requirements for electronically commutated motors for walk-in coolers and freezers described in paragraph (f)(1)(E)(i). Section 312 of EISA amends section 342 of EPCA by adding new subsection 342(f)(3) (42 U.S.C. 6313(f)(3)), which establishes additional requirements for walk-in coolers or walk-in freezers with transparent reach-in doors manufactured on or after January 1, 2009. Section 312 of EISA amends section 342 of EPCA by adding new subsection 342(f)(4) (42 U.S.C. 6313(f)(4)), which directs the Secretary to issue by rule, no later than January 1, 2012, performance-based standards for walk-in coolers and walk-in freezers manufactured on or after 3 or 5 years after the final rule is published. These new requirements are the subjects of this Framework Document.

Additionally, section 312(c) of EISA amends section 343(a) of EPCA (42 U.S.C. 6314(a)) by adding new subsection 343(a)(9) (42 U.S.C. 6314(a)(9)), which establishes test procedure definitions for walk-in cooler and freezer and directs the Secretary to establish test procedures to measure the energy-use of walk-in coolers and walk-in freezers. Accordingly, DOE intends to propose such test procedures under a separate rulemaking.

To initiate this rulemaking to establish energy conservation standards for this equipment class, DOE has prepared a Framework Document to explain the issues, analyses, and processes it anticipates using for the development of energy conservation standards for walk-in coolers and walk-in freezers. As noted above, DOE will hold a public meeting on Wednesday, January 28, 2009 in Washington, DC, the main focus of which will be to discuss the analyses presented and issues identified in the Framework Document. At the public meeting, the Department will make a number of presentations, invite discussion on the rulemaking process as it applies to walk-in coolers and walk-in freezers, and solicit public comments, data, and information from participants and other stakeholders.

The Department encourages those who wish to participate in the public meeting to obtain the Framework Document and to be prepared to discuss its contents. A copy of the draft Framework Document is available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/walkinrefrigeration_equipment.html*.

Public meeting participants need not limit their comments to the issues identified in the Framework Document. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this equipment and applicable test procedures. Furthermore, the Department welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by February 5, 2009, comments and information on matters addressed in the Framework Document and on other matters relevant to consideration of standards for walk-in coolers and walk-in freezers.

The public meeting will be conducted in an informal, facilitated, conference

[1] This part was originally titled Part B; however, it was redesignated Part A after Part B of Title III of EPCA was repealed by Public Law 109–58.

[2] This part was originally titled Part C; however, it was redesignated Part A–1 after Part B of Title III of EPCA was repealed by Public Law 109–58.

style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available on the above-referenced Web site.

After the public meeting and the close of the comment period on the Framework Document, DOE will begin collecting data, conducting the analyses as discussed in the Framework Document and at the public meeting, and reviewing the comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the Framework Document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE with the standards rulemaking process. Accordingly, anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding this rulemaking on walk-in coolers and walk-in freezers, should contact Brenda Edwards at (202) 586–2945, or via e-mail at: *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on December 24, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–31405 Filed 1–5–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 736

[Docket No. 0810231384–81391–01]

RIN 0694–XA15

Request for Public Comment on Foreign Produced Encryption Items That Are Made From U.S.-Origin Encryption Technology or Software

AGENCY: Bureau of Industry and Security.

ACTION: Notice of inquiry.

SUMMARY: To determine the appropriate extent and scope of U.S. export controls on foreign products that are the direct products of U.S.-origin encryption technology or software, BIS is seeking information on the potential impact of controlling such foreign made items for Encryption Items (''EI'') reasons under the EAR (i.e., those that are classified under ECCN 5A002 or 5D002) if the direct product of U.S.-origin ECCN 5E002 technology or ECCN 5D002 software. Specifically, BIS is requesting comments regarding the impact this control would have on both U.S. exporters of encryption technology and software and foreign manufacturers of products that are derived in whole or in part from U.S.-origin encryption technology or software.

DATES: Comments must be received no later than March 9, 2009.

ADDRESSES: Written comments may be submitted via *http://www.regulations.gov*; by e-mail directly to BIS at *publiccomments@bis.doc.gov*; in hardcopy to U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. and Pennsylvania Ave., NW., Room H–2705, Washington, DC 20230; or by fax to 202–482–3355. Please input ''0694–XA15'' in the subject line of the written comments.

FOR FURTHER INFORMATION CONTACT: For General Information Contact: Sharron Cook, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security at 202–482–2440, or fax 202–482–3355, or e-mail at *scook@bis.doc.gov*.

For Specific Encryption Related Information Contact: C. Randall Pratt, Information Technology Division, Office of National Security and Technology Transfer Controls at 202–482–0707 or E-Mail: C. Randall Pratt at *cpratt@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Foreign-Produced Direct Product Rule is found in General Prohibition No. 3 under section 736.2(b)(3) of the Export Administration Regulations (EAR) and in section 734.3(a)(4) of the EAR, ''Items Subject to the EAR.''

Under section 736.2(b)(3)(ii)(A) of the EAR, a foreign-made item is considered a direct product of U.S. technology or software if it meets the following conditions, it is the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at section 740.6 of the EAR, and it is subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

Section 736.2(b)(3)(i) provides that if a foreign-made item is a direct product of U.S.-origin technology or software pursuant to the criteria set forth above, then it is subject to the EAR if it is exported from the country of manufacture to a destination in Country Group D:1 or E:2 (Cuba) of Supplement No. 1 to Part 740 of the EAR. General Prohibition 3 prohibits the reexport or export from abroad of items meeting the criteria of foreign direct products of U.S.-origin technology or software to Country Group D:1 destinations or Cuba unless authorization has been granted via a license or license exception.

Technology and software controlled under ECCN 5E002 and 5D002 of the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) are subject to national security (''NS'') controls. When the foreign-produced direct product of such technology or software would be classified under ECCN 5A002 or 5D002, it would meet the definition of ''direct product'' under section 736.2(b)(3)(ii)(A) of the EAR.

BIS is seeking information on the impact of making the foreign-produced direct product of U.S.-origin ECCN 5E002 technology or ECCN 5D002 software, classified under ECCN 5A002 or 5D002 subject to the EAR if exported from the country of manufacture to any destination (except the United States or Canada). All such foreign-produced direct product ECCN 5A002 or 5D002 hardware or software would be subject to the license requirements of sections 742.15 (''EI'' encryption items) and 742.4 (''NS'' national security), or to the review requirements of section 740.17 (License Exception ENC). Reporting requirements under section 740.17(e) would not apply to exports from the country of manufacture of foreign-produced direct products, as reporting is required only for export from the United States or reexports from Canada.

The possible revision described above would apply to the foreign direct product of ECCN 5E002 technology and 5D002 software exported under license, not to the foreign direct product of technology and software exported under License Exception ENC of section 740.17 of the EAR.

Under the current provisions of section 736.2(b)(3), if ECCN 5E002 technology is exported under an export license for purposes of offshore manufacture of an encryption item that has previously been submitted to the U.S. Government for technical review and has been made eligible for export under License Exception ENC, the

foreign-produced direct product of the technology is *not* subject to the EAR unless: (1) It is exported from the country of manufacture to a destination in Country Group D:1 or E:2 (Cuba); or (2) it is exported from the United States after having been shipped to the United States from the country of manufacture.

However, all foreign-produced direct product of technology or software exported under License Exception ENC under either paragraph (a)(1) (for internal development of new products by a 'license-free zone' (Supplement No. 3 to part 740) ''private sector end-user'') or (a)(2) (to a ''U.S. subsidiary'' for internal use or development) are currently subject to the EAR by the terms of the notes to paragraphs (a)(1) and (a)(2).

Request for Comment

BIS is seeking public comment on the impact such a revision to section 736.2(b)(3)(i) would have on both U.S. manufacturers of encryption technology and software and foreign manufacturers of products (including under contract to U.S. companies who own and maintain the intellectual property, branding, marketing and distribution rights to the end-products manufactured offshore) that are derived in whole or in part from U.S.-origin encryption technology or software. BIS is also seeking information about the cost of compliance with such a revision, including U.S. Government review of foreign direct products prior to export from abroad. BIS is also seeking information on the burdens of complying with multiple sets of laws, foreign and U.S., which could result from the potential revision.

BIS would also like information about the various (commercial and military) applications of foreign products that are derived in whole or in part from U.S.-origin encryption technology or software. In addition, BIS is seeking information from foreign-manufacturers of encryption items about the factors that they or their competitors might consider in deciding to produce or use U.S.-origin encryption technology or software.

Additionally, BIS is interested in specific information (URL addresses, technical specifications, etc.) about the availability of foreign encryption technology and software that is equivalent to U.S.-origin encryption technology and software classified under ECCNs 5E002 and 5D002. Finally, BIS seeks information on the impact on the U.S. information technology manufacturing base and American jobs if encryption products continue to be not subject to the EAR when exported from abroad or reexported to countries other than those listed in Country Group D:1 and E:2, simply by being manufactured under an export license, when identical products manufactured onshore by U.S. companies (or overseas by U.S. subsidiaries pursuant to LE ENC or LE ENC-eligible ''private sector end-users'') are subject to the EAR.

Dated: December 29, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–31371 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 197

[USCG–1998–3786]

RIN 1625–AA21

Commercial Diving Operations

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the commercial diving regulations. We request public comment on industry standards and current practices that might be incorporated in our regulations or accepted as regulatory equivalents; the use of third-party auditing; new requirements for compliance documentation; the adoption of recommendations made following the investigation of a 1996 fatality; and possible additional regulatory revisions. This rulemaking will promote the enhancement of maritime safety which is a strategic goal of the Coast Guard.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 9, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–1998–3786 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.

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 Lieutenant Commander Rogers Henderson, U.S. Coast Guard, telephone (202) 372–1411. 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:

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I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
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III. Background and Purpose

I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–1998–3786), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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–1998–3786'' 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 this proposed rule based on your comments.

B. 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–1998–3786 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. 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**.

II. Abbreviations

ACDE Association of Commercial Diving Educators
ADC Association of Diving Contractors
ADCI Association of Diving Contractors International
ANPRM Advance Notice of Proposed Rulemaking
IMCA International Marine Contractors Association
NOSAC National Offshore Safety Advisory Committee

III. Background and Purpose

In 1994, an industry group known as the Association of Diving Contractors (ADC) (now the Association of Diving Contractors International, or ADCI), asked the Coast Guard to update commercial diving operation regulations in 46 CFR Part 197, Subpart B. Among other things, ADC recommended that we incorporate their consensus standards by reference. In response, we began this rulemaking and published an advance notice of proposed rulemaking (ANPRM, 63 FR 34840, June 26, 1998; comment period extended, 63 FR 50848, Sept. 23, 1998). The ANPRM referenced ADC's recommendations, and sought public comment on the necessity and scope of potential regulatory revisions.

Public comments received in response to the 1998 ANPRM revealed a deep split of opinion over incorporation of the ADC standards. Although the majority of commenters favored incorporation of the ADC standards, many said those standards were either inadequate or, alternatively, were unnecessarily burdensome and costly for small businesses. Other industry groups—the Association of Commercial Diving Educators (ACDE) and the International Marine Contractors Association (IMCA)—offered their own proposals. No further regulatory action was taken. However, the Coast Guard continued to recognize the need for further regulation to improve the safety of commercial diving.

Earlier this year, the Coast Guard received recommendations for commercial diving regulatory improvements from the National Offshore Safety Advisory Committee (NOSAC), a Federal advisory committee that advises the Coast Guard on matters related to operations and safety on the outer continental shelf including commercial diving safety. We have placed those recommendations in the docket for this rulemaking and are in the process of analyzing them for possible action. To assist in our analysis, we are soliciting public comments on the NOSAC recommendations, and on other ways in which we might improve our regulations, in light of experience and lessons learned since 1978, and since our first ANPRM in 1998. As noted, commercial diving industry groups were active in responding to the 1998 ANPRM, and we look forward to hearing from them again. We encourage those groups to work together to explore possible areas of agreement as to the regulatory changes that might do most to improve diver safety throughout the industry.

To assist you in organizing your comments, we invite your consideration of the following observations:

1. *Industry standards.* Our 1978 regulations in Part 197 provide a minimum framework for commercial diving safety. We are aware that in many regulated industries, regulated persons and companies often develop voluntary standards that provide protection at levels equal or superior to the protection that regulations can provide. Increasingly since 1978, Federal agencies, including the Coast Guard, have encouraged the development of, and compliance with, these standards. They provide regulatory flexibility and can be effective, efficient tools for attaining regulatory safety objectives. We would like to know whether such standards exist, or could be developed, for the commercial diving industry. We could consider incorporating such standards in our Part 197 regulations, or we could consider accepting compliance with such standards as equivalent to compliance with our regulations.

As previously discussed, public comments on our 1998 ANPRM revealed a deep split of opinions over the adequacy, effectiveness, and cost of the then-current industry standards. The apparent lack of industry consensus as to the value of the then-current standards was a major reason why the Coast Guard took no further regulatory action in the ensuing decade. Therefore, we strongly encourage commercial diving industry groups to work together to define standards to which all or most commercial diving operations can subscribe.

2. *Third-party audits.* The Coast Guard prefers to use regulations as a tool to encourage compliance, before injuries or deaths occur, rather than as a way of punishing violators in the wake of a tragedy. A third-party audit system could augment Coast Guard resources and help commercial diving operators avoid casualties before they happen, by providing regular monitoring of an operator's compliance with Part 197 or with an equivalent industry standard. The Coast Guard could regulate third-party auditors, and require commercial diving operators to be audited following promulgation of a final rule, and then annually and after any accident resulting in a diver's injury or death.

3. *Compliance documentation.* Even with annual compliance audits, there remains the potential for accidents leading to injury or death. The best protection against accidents are the diving operation's safety policies and practices, which need to be encouraged at all organizational levels beginning

with industry owners and operators. The Coast Guard believes that in many industries, owners and operators are more aware of safety requirements and do more to make sure their employees follow those requirements when they must document their compliance with those requirements.

4. *Rig No. 12 report.* The Coast Guard devotes significant resources to studying the causes of accidents that result in serious property losses, injury, or death, so that similar accidents can be avoided in the future. Lessons learned from tragedy make special demands on us to give them serious consideration and to implement them if possible. In the docket for this rulemaking at *http://www.Regulations.gov*, we are placing the formal investigation report into a commercial diving death at Cliff's Drilling Rig No. 12 in 1996. The report includes 13 recommendations and the Coast Guard is considering adopting most of these, in some cases with modifications.

5. *Regulatory priorities.* We have indicated our interest in industry standards, third-party audits, compliance documentation, and the Rig No. 12 report recommendations. In addition, we invite you to comment on overall regulatory approaches or on specific regulatory requirements that you believe should be a priority for this rulemaking. We are also inviting comments on current industry practices and changes in circumstances from conditions existing in 1998.

6. *Costs and Benefits.* We request comments on the costs and benefits of regulatory revisions suggested by the commenters. Providing us with specific information on the costs and benefits of regulatory suggestions will assist us with fully evaluating the merits of such suggestions. We are especially interested in information providing data on the cost of regulatory suggestions on small entities, and State, local, and tribal governments.

Dated: December 22, 2008.

Brian M. Salerno,

Assistant Commandant for Marine Safety, Security and Stewardship, U.S. Coast Guard.

[FR Doc. E8–31415 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1301

[STB Ex Parte No. 676]

Rail Transportation Contracts Under 49 U.S.C. 10709

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rule.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to amend its rules to provide that where an agreement for rail carriage contains the disclosure statement to be set forth in this new rule, the Board will not find jurisdiction over a dispute involving the rate or service under the agreement and will treat that agreement as a rail transportation contract governed by 49 U.S.C. 10709; and conversely where an agreement for rail carriage fails to contain the disclosure statement, the Board will find jurisdiction over a dispute involving the rate or service under the agreement, absent clear and convincing evidence that the parties intended to enter into a rail transportation contract governed by 49 U.S.C. 10709; and the shipper was made aware that it could request service under a common carrier tariff rate that would be subject to STB jurisdiction.

DATES: Comments on this proposal are due by February 5, 2009. Reply comments are due by March 9, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn.:* STB Ex Parte No. 676, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Timothy Strafford at (202) 245–0356. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking in STB Ex Parte No. 669 served on March 29, 2007 (2007 NPRM) and published in the **Federal Register** on April 4, 2007 (72 FR 16316–18), the Board sought to address two concerns arising from hybrid rail pricing mechanisms such as the one involved in *Kansas City Power & Light Company* v. *Union Pacific Railroad Company*, STB Docket No. 42095 (STB served Mar. 27, 2007) (*KCPL*), which, despite having characteristics of a rail transportation contract beyond the Board's jurisdiction under 49 U.S.C. 10709, are designated by the carrier as common carriage rates subject to the Board's jurisdiction.

The first concern was uncertainty. Although Congress expressly removed all matters and disputes arising from rail transportation contracts from the Board's jurisdiction, 49 U.S.C. 10709(c), the statute provides no clear demarcation between a contract rate and common carriage rate. The issue of whether a rate is a contract rate or common carriage rate has been examined on a case-by-case basis in light of the parties' intent. *See Aggregate Volume Rate on Coal, Acco, UT to Moapa, NV*, 364 I.C.C. 678, 689 (1981). With the enactment of the ICC Termination Act of 1995 (ICCTA), it became more difficult to distinguish between the two types of rates, as railroads are no longer required to file with the agency either tariffs containing their common carriage rates or summaries of their non-agricultural contracts.

The second concern was that increased use of hybrid pricing arrangements could create an environment where collusive activities in the form of anticompetitive price signaling could occur. Although the terms of a rail transportation contract generally are kept confidential, the terms and conditions of common carriage rates must be publicly disclosed upon request, 49 U.S.C. 11101, thereby increasing the possibility of collusive behavior in a highly concentrated industry.

In the 2007 NPRM, the Board proposed to address these two concerns by interpreting the term ''contract'' in 49 U.S.C. 10709 as embracing ''any bilateral agreement between a carrier and a shipper for rail transportation in which the railroad agrees to a specific rate for a specific period of time in exchange for consideration from the shipper, such as a commitment to tender a specific amount of freight during a specific period or to make specific investments in rail facilities.''

Both shippers and carriers opposed that proposal. After reviewing their comments, the Board concluded that its original proposal might have unintended and undesirable

consequences, and it decided to discontinue that proceeding.[1]

Nevertheless, we remained concerned with the lack of any clear demarcation between common carriage rates and contract pricing arrangements and the resulting ambiguity regarding the Board's jurisdiction. This ambiguity was exhibited in two recent Board proceedings regarding Option 2 of the Union Pacific Railway Company's (UP's) Circular 111.[2] In the first proceeding, the shipper, Kansas City Power & Light Company, agreed with UP that Circular 111 is a tariff. *See KCPL.* In the second proceeding, the shipper, Ameren Energy and Fuels Services Company, argued that Circular 111 is a contract. *See Union Pacific Railroad Company—Petition for Declaratory Order*, STB Finance Docket No. 35021 (STB served May 15, 2007). The fact that two sophisticated shippers regarded the same document, with the same language, in completely opposite ways underscores the need for greater clarity.

Thus, we sought an alternative, less-intrusive way to distinguish contracts from common carriage agreements.[3] Specifically, we sought public comment on whether the Board should require that each carrier provide a formal written disclosure statement when it seeks to enter into a rail transportation contract under 49 U.S.C. 10709. That statement would explicitly advise the shipper that the carrier intends the document to be a rail transportation contract and that any transportation under the document would not be subject to regulation by the Board. The statement would further advise the shipper that it has a statutory right to request a common carriage rate that the carrier would then have to supply promptly, and that such a rate might be open to challenge before the Board. We also sought comment on whether to include a requirement for a written informed consent statement in which the shipper acknowledges, and states its willingness to forgo, its regulatory options.

The Board received comments from Arkansas Electric Cooperative Corp. (AECC); the Association of American Railroads (AAR); BNSF Railway Company (BNSF); CSX Transportation, Inc. (CSXT); Edison Electric Institute (EEI); National Grain and Feed Association (NGFA); the National Industrial Transportation League (NITL); Norfolk Southern Railway Company (NS); Occidental Chemical Corp. (OxyChem); Olin Corp. (Olin); PPG Industries, Inc. (PPG); Progressive Rail, Inc. (PGR); Union Pacific Railroad Company (UP); United Transportation Union-General Committee of Adjustment, GO–386 (UTU); the U.S. Clay Producers Traffic Association, Inc. (Clay Producers); and the Western Coal Traffic League (WCTL). We have reviewed the record and taken each of these comments into account in the development of the proposed rule.

Proposed Rule

The somewhat different rule we now propose, which is set forth in the regulatory text of this document, seeks to provide a more objective means of determining whether the parties' intent was to use a common carriage tariff subject to the Board's jurisdiction or to agree to a rail transportation contract outside the Board's jurisdiction under 49 U.S.C. 10709.[4] A need for a clear demarcation between tariffs and contracts has become evident in recent Board proceedings and is recognized by many within the industry.[5] By proposing a rule that would encourage full disclosure to shippers of their regulatory options at the time of contract formation, the proposed rule should further Congress' dual intent to offer regulatory protection to shippers that desire such protection, while encouraging private rail transportation contracts for those shippers that prefer such arrangements. The rule proposed here would not require the inclusion of a disclosure statement; rather, it would simply set forth the criteria that the Board would apply to determine its jurisdiction based on the presence or absence of such a statement.

The significant change between this proposal and our prior proposal is the removal of the informed consent requirement. The anticipated benefits of the informed consent proposal are outweighed by the potential for unintended consequences that could hamper contracting for rail carriage. Carriers made a strong case that the informed consent requirement would unnecessarily complicate the contract process and delay the timely implementation of contracts, especially when contracts are negotiated electronically or in the case of signatureless contracts.[6] And shippers made a strong case that, by signing an informed consent statement, they would be unable to argue in court that a unilateral agreement is a contract of adhesion.[7] We believe that a prominently displayed disclosure statement that provides explicit notice to the shipper of the nature of the agreement would further Congress' concern that shippers not opt out of our regulatory protections unknowingly. Nevertheless, the incremental benefit of imposing an additional informed consent requirement does not appear to merit the hindrance and delay to modern contract formation that it might cause.

Given the Board's lack of jurisdiction over contracts under 49 U.S.C. 10709, some comments suggest that any rule should focus only on common carriage,[8] an area clearly within our jurisdiction.[9] But to exercise jurisdiction over matters properly before us, we must be able to distinguish between common carriage and contract pricing arrangements in situations where the terms and conditions can appear to be identical.[10]

This proposal should establish a practical way to allow a clear demarcation between contract and

[1] A complete review of the comments submitted in STB Ex Parte No. 669 and the Board's reasons for rejecting that approach and pursuing a different approach by instituting STB Ex Parte No. 676 is provided in *Rail Transportation Contracts Under 49 U.S.C. 10709*, STB Ex Parte No. 676, *et al.* (STB served Mar. 12, 2008) (*ANPR*).

[2] UP's Circular 111, ''Unit Train Coal Common Carrier Circular Applying On: Unit Coal Trains from the Powder River Basin of Wyoming,'' contains two classes of rates for customers. One class, referred to as Option 1, contains a higher rate with no volume requirement. The second class, referred to as Option 2, contains a lower rate with commitments from both parties for term, volume, rates, and service.

[3] *See ANPR supra.*

[4] This proposed rule would apply only to agreements between shippers and carriers for rail service. As PGR has pointed out, a disclosure statement is not needed for contracts between carriers, such as freight handling, haulage, and switching agreements. Nor would the proposed rule be intended to apply to separate contracts for accessorial services such as demurrage and storage, transloading to and from other modes, incidental warehousing during transloading, and local drayage.

[5] *See* AECC at 2; CSXT at 4; Clay Producers at 1; WCTL at 4.

[6] *See* AAR note 5 at 12; CSXT at 3; NS at 5; UP at 7.

[7] *See* Olin at 2.

[8] *See* AAR at 5; BNSF at 4; CSXT at 7; NS at 3; WCTL at 5.

[9] Although the Board has authority to define how it will determine what constitutes a tariff, doing so could overlap with the jurisdiction of the courts. For instance, NITL and others have argued that we should define common carriage to include unilateral rate offerings. *See* NITL at 5. However, there are unilateral agreements that are recognized by courts as contracts and we have no authority to question a court's judgment on these matters.

[10] It is well-settled that the Board has jurisdiction to determine its jurisdiction. *See Burlington N., Inc.* v. *Chicago & N.W. Transp. Co.*, 649 F.2d 556, 558 (8th Cir. 1981); *cf. Wms. Gas Processing-Gulf Coast Co.* v. *FERC*, 475 F.3d 319, 323 (D.C. Cir. 2006) (FERC must draw the line between non-jurisdictional gathering and jurisdictional transportation of natural gas, a line that is ''not always clear'').

common carrier rates. With respect to the proposed disclosure statement provision, set forth in the proposed new § 1301.1 [11] the disclosure statement should be placed prominently at the top of the first page of the agreement, in type size at least as large as the type used for the body of the agreement.[12] We are not proposing that carriers be required to use the disclosure statement but rather that the inclusion of this statement in an agreement would establish clear and objective evidence that the parties intended to enter into a contract under 49 U.S.C. 10709 and that their dispute thus lies outside the Board's jurisdiction. Absent the inclusion of such a disclosure statement, we would find that an agreement for rail transportation is a common carriage tariff and would take jurisdiction over a rate or service complaint absent clear and convincing evidence both that the parties intended to enter into a rail transportation contract and that the shipper was made aware that it could request a common carriage tariff that would be subject to STB jurisdiction.

This disclosure statement provision should be a workable mechanism to solve the demarcation problem between contracts and tariffs without hindering contracting or inappropriately encouraging the use of tariffs. Use of the disclosure statement by carriers should adequately allay shipper and carrier concerns in this regard.[13] Nevertheless, we remain open to comments not only on the proposed rule itself but also regarding the language of the disclosure statement to ensure that it would not inadvertently encourage a common carriage agreement over a rail transportation contract.

The disclosure statement provision should promote regulatory efficiency by establishing a transparent mechanism to determine our jurisdiction over a rate or service complaint instead of having to glean the parties' intent based on the unique facts of each case before us. The parties should benefit by the associated reduction in legal fees in actions before the Board and in court.

Railroads have suggested using a safe harbor approach, instead of a disclosure statement, to allow various ways to demonstrate the parties' intentions.[14] Shippers suggest alternatively that any ambiguity on the face of a document should be construed against the carrier as the drafter of the document.[15] Neither of these approaches would promote efficiency, however, as they would require the Board to examine extraneous evidence beyond the document to determine the parties' intent in every instance.

Finally, Olin expressed concern that the Board not preempt by rule state law as to what constitutes a contract, or on whether one can have an enforceable contract on rates without other agreed-upon terms and conditions.[16] We do not intend for inclusion of the disclosure statement in an agreement to be dispositive in court that a contract exists, or to preclude shippers from making an argument that the document is a contract of adhesion or raising any other defense in state court. The proposed rule is simply intended to be a mechanism for assisting the Board in determining the Board's jurisdiction to adjudicate a rate or service complaint involving rail transportation arrangements.

Ancillary Matters

Two additional concerns have been raised in the shippers' comments regarding how carriers negotiate contracts for rail service. They relate to unilateral contracts and bundling.

Unilateral contracts, or signatureless contracts, are contract offers made by a carrier that a shipper accepts by tendering shipment. Shippers suggest that this practice should be considered a tariff subject to Board jurisdiction, as there is no bilateral negotiation.[17] But this practice is generally beyond the jurisdiction of the Board; carriers may offer and shippers may accept these contracts, as long as state courts recognize them as such. Instead, we propose to regard unilateral or signatureless agreements that lack the disclosure language as common carrier tariffs subject to our jurisdiction, unless there is clear and convincing evidence both that the parties intended to enter into a rail transportation contract and that the shipper was made aware that it could request a common carriage tariff that would be subject to STB jurisdiction.

Bundling occurs when a shipper and carrier negotiate multiple movements at one time. Shippers claim that carriers often refuse to provide common carriage rates until contract negotiations are exhausted, or they withdraw contract offers on all movements if a tariff rate is requested on any movement.[18] The purpose of the proposed rule is to provide clarity regarding when an arrangement is one for common carriage and thus within the Board's jurisdiction. We will not complicate this proceeding by addressing negotiating practices. Carriers have a common carrier obligation to provide service upon reasonable request. Allegations of violations of that obligation are best considered by individual complaint.

Conclusion

This proposal is consistent with the Board's jurisdiction and regulatory responsibilities. The proposed rule would have no substantive effect on contracting; the Board is not proposing to dictate how parties negotiate. Nor would the proposal seek to dictate to a court of competent jurisdiction how to interpret, apply, or determine what constitutes a contract. However, as rail transportation contracts and tariffs can be indistinguishable, all parties should know what they are agreeing to and what rights may be available to them, including any right to seek regulatory relief.

The proposed rule, if adopted, would apply prospectively only, and would not be applicable to existing contracts, existing amendments, or existing supplements to contracts.[19] But if the proposed rule is adopted, all subsequent contracts, amendments and supplements, even those that attach to contracts signed before the effective date of the new rule, would need to contain the disclosure statement in order to be conclusively presumed to be a contract under 49 U.S.C. 10907 and thus outside of the Board's jurisdiction.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the proposed action would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1301

Administrative practice and procedure, and Railroads.

Authority: 49 U.S.C. 721(a) and 10709.

[11] The disclosure language is based on language suggested by WCTL. *See* WCTL at 12.

[12] Some shipper groups expressed concern that a contract disclosure provision would be useless, and possibly harmful to shippers, if the language is not easily discernable on the front of the document. *See* Clay Producers at 2–3. We are proposing to specify the expected location and minimum type size in order to address this concern.

[13] *See* AAR at 10; BNSF at 3; UP at 7; WCTL at 11.

[14] *See* AAR at 13; BNSF at 5; NS at 4; WCTL at 7.

[15] *See* WCTL at 6.

[16] *See* Olin at 2.

[17] *See* NITL at 5.

[18] *See* EEI at 4; Oxychem at 2; Olin at 3.

[19] We agree with public comments to the ANPR suggesting that any rule should only apply prospectively. *See* AAR at 14.

Decided: December 30, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to add part 1301 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1301—RAIL TRANSPORTATION CONTRACTS

Authority: 49 U.S.C. 721(a) and 10709.

§ 1301.1 Contract Disclosure Statement.

(a) The Board will not find jurisdiction over a dispute involving the rate or service under a rail transportation agreement where that agreement contains a disclosure statement that conforms with paragraphs (b) and (c) of this section. Conversely, where a rail transportation agreement fails to contain such a disclosure statement, the Board will find jurisdiction over a dispute involving the rate or service provided under that agreement, absent clear and convincing evidence both that the parties intended to enter into a rail transportation contract governed by 49 U.S.C. 10709 and that the shipper was made aware that it could request service under a common carrier tariff rate that would be subject to STB jurisdiction.

(b) The disclosure statement should appear at the top of the first page of the rail transportation agreement in type size at least as large as the type size used for the body of the agreement.

(c) The disclosure statement should read as follows:

Disclosure Statement—This agreement constitutes a rail transportation contract under 49 U.S.C. 10709. Contract arrangements are generally not subject to challenge before the Surface Transportation Board (''STB''), but can be enforced in a court of competent jurisdiction. Under federal rules found at 49 CFR 1300, railroads are required, upon request, to quote to shippers a rate for common carriage transportation (i.e., a non-contract rate). Pursuant to 49 U.S.C. 10701, the STB has jurisdiction (subject to some exceptions) over disputes arising out of common carriage (non-contract) rates.

[FR Doc. E8–31398 Filed 1–5–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0130; MO 9221050083]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on 270 species from a petition to list 475 species in the southwestern United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that for these 270 species the petition does not present substantial scientific or commercial information indicating that listing these species may be warranted. Therefore, for these 270 species, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of these 270 species or threats to them or their habitat at any time. This information will help us monitor and encourage the conservation of these species. An additional 5 species of the 475 included in the petition do not fall within the scope of the petition or are not a listable entity and, therefore, were not considered in this finding (*see* Petition).

DATES: The finding announced in this document was made on January 6, 2009. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov.* Supporting information we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Southwest Regional Ecological Services Office, 500 Gold Ave., SW., Albuquerque, NM 87102. Please submit any new information, materials, comments, or questions concerning these species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Assistant Regional Director, Southwest Regional Ecological Services Office (see **ADDRESSES**); telephone 505/248–6920; facsimile 505/248–6788. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that a petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for ''substantial information,'' as defined in the Code of Federal Regulations at 50 CFR 424.14(b), with regards to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' If we find that substantial information was presented, we are required to promptly commence a status review of the species.

In making this finding, we based our decision on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and otherwise available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened with critical habitat. The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* into the petition. The petition clearly identified itself as a petition and included the identification information,

as required in 50 CFR 424.14(a). We sent a letter to the petitioners dated July 11, 2007, acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office. On June 18, 2008, we received a petition from WildEarth Guardians dated June 12, 2008, to emergency list 32 species under the Administrative Procedure Act (APA) and the Endangered Species Act. Of those 32 species, 21 were included in the June 18, 2007, petition to be listed on a non-emergency basis. In a letter dated July 22, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that an emergency situation existed for any of the 21 species. This letter concludes our processing of the emergency aspect of the 2008 petition under the APA. The following discussion presents our partial evaluation of the June 18, 2007 and June 12, 2008 petitions, based on information provided in the petition and our current understanding of the species.

The 2007 petition included a list of 475 species. One species, Salina mucket (*Potamilus metnecktayi*), is also known by the scientific name *Disconaias salinasensis;* we were petitioned to list the species under both names. The species files in NatureServe for these two names are identical. For the remainder of our review we used the name *P. metnecktayi*; therefore, we reviewed only 474 actual species files. This finding addresses 270 of the 475 species for which we were petitioned. The remaining 200 species will be addressed in one or more additional 90-day findings in the future. Although we are not making a finding on the remaining 200 species at this time, the lack of inclusion of those species in this finding does not imply that we are making or will make a positive finding on any or all of the remaining species. Our priority for responding to a petition is a function of the resources that are available and competing demands for those resources.

Because the petition requested that we consider all species from the list that were not currently listed, proposed for listing, or candidates for listing, 3 of the 474 species were also not included in the review. Quitobaquito pupfish (*Cyprinodon eremus*) is currently listed as endangered under the name desert pupfish (*Cyprinodon macularius eremus*). In Arizona, this family was historically represented by two recognized subspecies, *Cyprinodon m. macularius* and *C. m. eremus,* and an undescribed species, the Monkey Spring pupfish. Minckley *et al.* (2002, p. 701) raised *C. m. eremus* to a full species, *C. eremus.* The species is listed as endangered throughout its range, so we did not consider it as part of this petition. On December 13, 2007, we made a 12-month finding that the Jollyville Plateau salamander (*Eurycea tonkawae*) warrants listing, but that listing is precluded by higher listing priorities (72 FR 71040), thus rendering the species to candidate status. On December 6, 2007, we published our annual review of native species that are candidates for listing as endangered or threatened (72 FR 69034), in which we made the San Bernadino springsnail (*Pyrgulopsis bernardina*) a candidate species. Because these three species, Quitobaquito pupfish, Jollyville Plateau salamander, and San Bernardino springsnail, are currently listed or are candidates for listing, and we were petitioned to list species that are not listed or candidates, they were not evaluated as part of this petition.

Agave arizonica (Arizona agave) was recently delisted (71 FR 35195; June 19, 2006) because it was determined to be a product of hybridization and, therefore, not a listable entity. No new information was presented in the petition for Arizona agave. Because of its current status, the Arizona agave was not considered in our review. After eliminating review of Quitobaquito pupfish, Jollyville Plateau salamander, San Bernardino springsnail, and Arizona agave, there were 470 species files to continue with our review in the NatureServe database.

This finding addresses 270 of the 470 species for which we were validly petitioned. The remaining 200 species will be addressed in one or more additional 90-day findings in the future. Our priority for responding to a petition is a function of the resources that are available and competing demands for those resources. Thus, in any given fiscal year, multiple factors dictate whether it will be possible to undertake work on particular listing actions. The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to revise critical habitat and to add species to the Lists of Endangered and Threatened Wildlife and Plants or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to, gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our determinations under section 4(a)(1) of the Act; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (*see* 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (e.g., Recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (*see* House Report 105–163, 105th Congress, 1st Session, July 1, 1997). Thus, through the listing cap and the amount of funds needed to address court-mandated listing actions, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated listing actions, set the limits on our ability to fully respond to this petition. When funds become available, we will continue our review of the remaining petitioned species that are not addressed in this finding and publish one or more findings for those species.

Species Information

The petitioners presented two tables that collectively listed the 475 species for consideration and requested that the Service incorporate all analyses, references, and documentation provided by NatureServe in its online database into the petition. The information presented by NatureServe (*http://www.natureserve.org/explorer/*) is found

in peer-reviewed professional journal articles and is considered to be a reputable source of scientific information. We judge this source to be reliable with regard to the information it presents.

We accessed the NatureServe database on July 5, 2007. We saved electronic and hard-copies of each species file and used this information, including references cited within these files, during our review. Therefore, all information we used from the species files in NatureServe was current to that date. All of the petitioned species were ranked by NatureServe as G1 (critically imperiled) or G1G2 (between critically imperiled and imperiled).

We reviewed all references cited in the NatureServe database species files that were available to us. For some species in NatureServe, there is a ''Local Programs'' link to the Web sites of the State programs that contribute information to NatureServe. We found this ''Local Programs'' link to have additional information for very few of the 470 species. We reviewed information in references cited in NatureServe and information readily available in our files, on the Internet, and in local libraries that was directly relevant to the information raised in the petition. For the 21 of the 32 species which were also included in the petition to emergency list dated June 12, 2008, we also used information provided in that petition. Following review of the available information, we separated the 470 species into categories based on the level of information found.

We were unable to readily locate one or more references, which we believed might contain additional information on threats for 82 of the species. Without review of those references, we could not be certain that we had assigned them to the correct category. Therefore, on May 12, 2008, we sent a letter to the petitioners requesting those references. The petitioners responded with copies of all but three of the requested references or information on how to purchase them. The date we received the last of the references from the petitioners was July 15, 2008. That did not provide us with sufficient time to review those references for 79 of the 82 species, so we have not addressed them in this finding, but we will consider them in one or more future findings. The 270 species included in this finding are listed in Table 1; they fit into four distinct information level categories.

The first category, titled Category A in Table 1, has only minimal information about each species, and in some cases no more information than the name of the species. An example of a species in this category that had minimal information is a cave obligate spider with no common name (*Cicurina travisae*). The NatureServe file for this species names the species, states that it is endemic to Texas, and lives in subterrestrial habitat. The file provides one reference (Gertsch 1992), which contains no information on threats to the species, but describes many spiders within the genus. The Gertsch publication describes the physical characteristics of *C. travisae*, diagrams of body parts, and some locations where it has been found with no information on the level of survey effort to determine its range (Gertsch 1992, p. 101). The magnitude and type of information provided for other species in this category was similar in nature, or was mainly taxonomic without as much locational information. Category A contains 225 species, of which 1 is a vertebrate, 189 are invertebrates, and 35 are plants.

Occasionally, generic information was presented in the NatureServe species files for a larger group of species we placed in Category A, such as for the class or family the species belongs to, but not specific information on the individual species. The references were taxonomic in nature or simply checklists (lists of species, for example Common and Scientific Names of Fishes from the United States and Canada (Robbins *et al.* 1991)) or taxonomic keys (which provide anatomical characteristics for identification of species) and did not address threats to the species. An example that illustrates the type of generic information that was presented for such species in Category A is Silver Creek woodlandsnail (*Ashmunella binneyi*). The NatureServe file for this species states the name of the species and lists one reference that is a checklist of names of aquatic invertebrates from the United States and Canada (Turgeon *et al.* 1998). The file contains no other information specific to Silver Creek woodlandsnail. The file does describe the basic biology of terrestrial snails (pulmonates) in general stating ''terrestrial gastropods do not move much usually only to find food or reproduce'' and ''as a whole, pulmonates (previously Subclass Pulmonata) are better dispersers than prosobranchs (previously Subclass Prosobranchia) possibly due to their hermaphroditic reproduction increasing the chance of new colonization.'' The identical language was used in other NatureServe files for terrestrial snail species, and no specific information was provided about the species or threats to the species or its habitat.

The information we reviewed for the species in Category B (see Table 1) contained basic information on the range of the species, based on some level of survey effort. Habitat was frequently mentioned as well as other aspects of the species' biology, such as food habitats. Population size or abundance, if addressed, was rarely quantified, and the database instead used descriptors such as large, small, or numerous. The available information we reviewed did not address specific threats to the species. Category B contains 38 species, of which 2 are vertebrates, 25 are invertebrates, and 11 are plants.

An example of the type of information we found for species in Category B is illustrated by the Animas Mountains tubeshell (*Holospira animasensis*). The NatureServe file for the Animas Mountains tubeshell provides one reference, which is a published description of the newly discovered species (Gilbertson and Worthington 2003, pp. 220–224). That article describes the physical characteristics of the species and the habitat in which it was discovered. The article does not address threats to the Animas Mountains tubeshell. The NatureServe file for this species cites Gilbertson and Worthington (2003) and states that live individuals are known only from the north slope of a single hill at the north end of Animas Mountains, and that fossil shells were found from sediments exposed in a mine roadcut on the south side of the hill. The file also states, under Global Protection, that no occurrences are appropriately protected and managed, but under Threats, it states that threats are unknown. This information is typical for the species in Category B.

The information we reviewed for the species in Category C (*see* Table 1) described one or more threats for the general area, but it did not link the threats to the species or the habitat at the site occupied by the species. Information for species in this category is sometimes provided on distribution, habitat, population size, or other aspects of the species' biology. There are five species in Category C, of which one is an invertebrate and four are plants.

An example of the type of information we reviewed for Category C species is for *Panicum mohavense* (Mojave panicgrass), which occurs at one site on a large military base in New Mexico and five sites in Arizona. The NatureServe file states that for the New Mexico site, there is some grazing in the remote area where the species occurs, but that the threat to the species is unknown. The habitat is described for all of the sites,

but no threats are mentioned for the sites in Arizona. Ladyman (1999), which was cited in NatureServe, did not name additional threats to the species, but recommended additional surveys to determine habitat requirements and abundance.

The information we reviewed for the species in Category D (see Table 1) cited one or more threats and generally linked them to the species or its habitat. However, we have no documentation to support significant impacts from the threats. These species are addressed in the Threats Analysis section. There are two species in Category D, both of which are plants.

This finding addresses the 270 petitioned species that are listed in Table 1. Of the 270 species, 3 are vertebrates, 215 are invertebrates, and 52 are plants.

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES

Category	Scientific name	Common name	Range	Group
A	*Eurycea sp. 10*	Dolan Falls Salamander	TX	vertebrate
A	*Gammarus pecos*	Pecos Amphipod	TX	invertebrate
A	*Hyalella texana*	Clear Creek Amphipod	TX	invertebrate
A	*Agylla septentrionalis*	A Tiger Moth	AZ	invertebrate
A	*Sonorarctia fervida*	A Tiger Moth	AZ	invertebrate
A	*Ceratopsyche vanaca*	A Caddisfly	NM	invertebrate
A	*Hydroptila abbotti*	A Caddisfly	TX	invertebrate
A	*Neotrichia juani*	A Caddisfly	TX	invertebrate
A	*Neotrichia sonora*	A Caddisfly	TX	invertebrate
A	*Taeniopteryx starki*	Texas Willowfly	TX	invertebrate
A	*Melanoplus chiricahuae*	A Spur-throat Grasshopper	AZ	invertebrate
A	*Melanoplus pinaleno*	A Spur-throat Grasshopper	AZ	invertebrate
A	*Agathon arizonicus*	A Net-winged Midge	AZ	invertebrate
A	*Isoperla sagittata*	A Stonefly	TX	invertebrate
A	*Phreatodrobia conica*	Hueco Cavesnail	TX	invertebrate
A	*Pyrgulopsis sola*	Brown Springsnail	AZ	invertebrate
A	*Pyrgulopsis sp. 2*	Mimbres Springsnail	NM	invertebrate
A	*Stygopyrgus bartonensis*	Barton Cavesnail	TX	invertebrate
A	*Texapyrgus longleyi*	Striated Hydrobe	TX	invertebrate
A	*Tryonia brunei*	Brune Spring Snail	TX	invertebrate
A	*Tryonia diaboli*	Devil Tryonia	TX	invertebrate
A	*Ashmunella animasensis*	Animas Peak Woodlandsnail	NM	invertebrate
A	*Ashmunella ashmuni*	Jemez Woodlandsnail	NM	invertebrate
A	*Ashmunella bequaerti*	Goat Cave Woodlandsnail	TX	invertebrate
A	*Ashmunella binneyi*	Silver Creek Woodlandsnail	NM	invertebrate
A	*Ashmunella danielsi*	Whitewater Creek Woodlandsnail	NM	invertebrate
A	*Ashmunella edithae*	Mckittrick Woodlandsnail	TX	invertebrate
A	*Ashmunella ferrissi*	Reed's Mountain Woodlandsnail	AZ	invertebrate
A	*Ashmunella lenticula*	Horseshoe Canyon Woodlandsnail	AZ	invertebrate
A	Ashmunella mendax	Iron Creek Woodlandsnail	NM	invertebrate
A	*Ashmunella mogollonensis*	Mogollon Woodlandsnail	AZ	invertebrate
A	*Ashmunella mudgei*	Sawtooth Mountain Woodlandsnail	TX	invertebrate
A	*Ashmunella pilsbryana*	Blue Mountain Woodlandsnail	AZ	invertebrate
A	*Ashmunella pseudodonta*	Capitan Woodlandsnail	NM	invertebrate
A	*Ashmunella rileyensis*	Mount Riley Woodlandsnail	NM	invertebrate
A	*Ashmunella salinasensis*	Salinas Peak Woodlandsnail	NM	invertebrate
A	*Ashmunella todseni*	Maple Canyon Woodlandsnail	NM	invertebrate
A	*Ashmunella walkeri*	Florida Mountain Woodlandsnail	NM	invertebrate
A	*Coelostemma pyrgonasta*	Bishop Cap Tubesnail	NM	invertebrate
A	*Daedalochila scintilla*	A Terrestrial Snail	TX	invertebrate
A	*Gastrocopta prototypus*	Sonoran Snaggletooth	AZ, NM	invertebrate
A	*Gastrocopta ruidosensis*	Ruidoso Snaggletooth	KS, NE, NM, OK, TX	invertebrate
A	*Holospira cockerelli*	Cockerell Holospira	NM	invertebrate
A	*Holospira metcalfi*	Metcalf Holospira	NM	invertebrate
A	*Holospira sherbrookei*	Silver Creek Holospira	AZ	invertebrate
A	*Humboldtiana fullingtoni*	Capote Threeband	TX	invertebrate
A	*Naesiotus christenseni*	Santa Rita Rabdotus	AZ	invertebrate
A	*Nesovitrea suzannae*	Live Oak Glass	TX	invertebrate
A	*Oreohelix barbata*	Bearded Mountainsnail	AZ, NM	invertebrate
A	*Oreohelix confragosa*	Pinos Altos Mountainsnail	NM	invertebrate
A	*Oreohelix houghi*	Diablo Mountainsnail	AZ, NM	invertebrate
A	*Oreohelix litoralis*	San Agustin Mountainsnail	NM	invertebrate
A	*Oreohelix magdalenae*	Magdalena Mountainsnail	NM	invertebrate
A	*Oreohelix swopei*	Morgan Creek Mountainsnail	NM, WY	invertebrate
A	*Pallifera tournescalis*	Ouachita Mantleslug	OK	invertebrate
A	*Paravitrea alethia*	Goddess Supercoil	TN, TX	invertebrate
A	*Patera leatherwoodi*	Pedernales Oval	TX	invertebrate
A	*Philomycus batchi*	Dusky Mantleslug	OK	invertebrate
A	*Philomycus bisdodus*	Grayfoot Mantleslug	OK	invertebrate
A	*Sonorella anchana*	Sierra Ancha Talussnail	AZ	invertebrate
A	*Sonorella animasensis*	Animas Talussnail	NM	invertebrate

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	*Sonorella apache*	Apache Talussnail	AZ	invertebrate
A	*Sonorella bagnarai*	Rincon Talussnail	AZ	invertebrate
A	*Sonorella bartschi*	Escabrosa Talussnail	AZ	invertebrate
A	*Sonorella binneyi*	Horseshoe Canyon Talussnail	AZ	invertebrate
A	*Sonorella bowiensis*	Quartzite Hill Talussnail	AZ, CA	invertebrate
A	*Sonorella bradshaveana*	Bradshaw Talussnail	AZ	invertebrate
A	*Sonorella clappi*	Madera Talussnail	AZ	invertebrate
A	*Sonorella coltoniana*	Walnut Canyon Talussnail	AZ	invertebrate
A	*Sonorella compar*	Oak Creek Talussnail	AZ	invertebrate
A	*Sonorella dalli*	Garden Canyon Talussnail	AZ	invertebrate
A	*Sonorella delicata*	Tollhouse Canyon Talussnail	AZ	invertebrate
A	*Sonorella dragoonensis*	Stronghold Canyon Talussnail	AZ	invertebrate
A	*Sonorella ferrissi*	Dragoon Talussnail	AZ	invertebrate
A	*Sonorella imperatrix*	Total Wreck Talussnail	AZ	invertebrate
A	*Sonorella imperialis*	Empire Mountain Talussnail	AZ	invertebrate
A	*Sonorella insignis*	Whetstone Talussnail	AZ	invertebrate
A	*Sonorella meadi*	Aqua Dulce Talussnail	AZ	invertebrate
A	*Sonorella micromphala*	Milk Ranch Talussnail	AZ	invertebrate
A	*Sonorella reederi*	Rampart Talussnail	AZ	invertebrate
A	*Sonorella russelli*	Black Mesa Talussnail	AZ	invertebrate
A	*Sonorella tryoniana*	Sanford Talussnail	AZ	invertebrate
A	*Sonorella vespertina*	Evening Talussnail	AZ	invertebrate
A	*Sonorella waltoni*	Doubtful Canyon Talussnail	AZ	invertebrate
A	*Vertigo berryi*	Rotund Vertigo	AZ, CA	invertebrate
A*	*Vertigo binneyana*	Cylindrical Vertigo	CAN: BC, MB, ON; USA: IA, KS, MT, NM	invertebrate
A	*Cisthene conjuncta*	A Tiger Moth	TX	invertebrate
A	*Catinella texana*	A Terrestrial Snail	LA, TX	invertebrate
A	*Artesia subterranea*	A Cave Obligate Amphipod	TX	invertebrate
A	*Artesia welbourni*	A Cave Obligate Amphipod	TX	invertebrate
A	*Caecidotea adenta*	A Cave Obligate Isopod	OK	invertebrate
A	*Caecidotea bisetus*	A Cave Obligate Isopod	TX	invertebrate
A	*Holsingerius smaragdinus*	A Cave Obligate Amphipod	TX	invertebrate
A	*Seborgia hershleri*	A Cave Obligate Amphipod	TX	invertebrate
A	*Stygobromus bowmani*	Bowman's Cave Amphipod	OK	invertebrate
A	*Stygobromus reddelli*	Reddell's Cave Amphipod	TX	invertebrate
A	*Batrisodes grubbsi*	A Beetle	TX	invertebrate
A	*Rhadine austinica*	A Cave Obligate Beetle	TX	invertebrate
A	*Rhadine insolita*	A Cave Obligate Beetle	TX	invertebrate
A	*Rhadine noctivaga*	A Cave Obligate Beetle	TX	invertebrate
A	*Rhadine russelli*	A Cave Obligate Beetle	TX	invertebrate
A	*Alexicles aspersa*	A Tiger Moth	AZ, NM	invertebrate
A	*Lepidostoma ozarkense*	A Caddisfly	AR, OK	invertebrate
A	*Neotrichia mobilensis*	A Caddisfly	AL, TX	invertebrate
A	*Ochrotrichia guadalupensis*	A Caddisfly	TX	invertebrate
A	*Melanoplus alexanderi*	A Grasshopper	TX	invertebrate
A	*Melanoplus magdalenae*	A Spur-throat Grasshopper	AZ, NM	invertebrate
A	*Baetodes alleni*	A Mayfly	TX	invertebrate
A	*Thalkethops grallatrix*	A Cave Obligate Centipede	NM	invertebrate
A	*Balconorbis uvaldensis*	Balcones Ghostsnail	TX	invertebrate
A	*Phreatoceras taylori*	Nymph Trumpet	TX	invertebrate
A	*Phreatodrobia coronae*	A Cavesnail	TX	invertebrate
A	*Phreatodrobia rotunda*	Beaked Cavesnail	TX	invertebrate
A	*Ashmunella chiricahuana*	Cave Creek Woodlandsnail	AZ	invertebrate
A	*Ashmunella esuritor*	Barfoot Woodlandsnail	AZ	invertebrate
A	*Ashmunella lepiderma*	Whitetail Woodlandsnail	AZ	invertebrate
A	*Ashmunella rhyssa*	Sierra Blanca Woodlandsnail	NM	invertebrate
A	*Deroceras heterura*	Marsh Slug	NM	invertebrate
A	*Holospira tantalus*	Teasing Holospira	AZ	invertebrate
A	*Holospira whetstonensis*	Whetstone Holospira	AZ	invertebrate
A	*Neohelix lioderma*	Tulsa Whitelip	OK	invertebrate
A	*Sonorella caeruliflumini*	Blue Talussnail	AZ	invertebrate
A	*Sonorella micra*	Pygmy Sonorella	AZ	invertebrate
A	*Sonorella neglecta*	Portal Talussnail	AZ	invertebrate
A	*Apocheiridium reddelli*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Archeolarca guadalupensis*	Guadalupe Cave Pseudoscorpion	TX	invertebrate
A	*Archeolarca welbourni*	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	*Cheiridium reyesi*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Chitrella elliotti*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Chitrella major*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Chitrella welbourni*	A Cave Obligate Pseudoscorpion	NM	invertebrate
A	*Cicurina barri*	A Cave Obligate Spider	TX	invertebrate

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	*Cicurina caverna*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina coryelli*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina cueva*	A Cave Spider	TX	invertebrate
A	*Cicurina ezelli*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina gruta*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina holsingeri*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina machete*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina mckenziei*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina medina*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina menardia*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina obscura*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina orellia*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina pablo*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina pastura*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina patei*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina porteri*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina puentecilla*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina rainesi*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina reclusa*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina reddelli*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina reyesi*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina russelli*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina sansaba*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina selecta*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina serena*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina sheari*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina sprousei*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina stowersi*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina suttoni*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina travisae*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina ubicki*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina uvalde*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina venefica*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina vibora*	A Cave Obligate Spider	TX	invertebrate
A	*Cicurina watersi*	A Cave Obligate Spider	TX	invertebrate
A	*Leucohya texana*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Mexichthonius exoticus*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Neoallochernes incertus*	A Cave Obligate Pseudoscorpion	NM	invertebrate
A	*Neoleptoneta concinna*	A Cave Obligate Spider	TX	invertebrate
A	*Neoleptoneta devia*	A Cave Obligate Spider	TX	invertebrate
A	*Neoleptoneta valverde*	A Cave Obligate Spider	TX	invertebrate
A	*Pseudogarypus hypogeus*	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	*Tartarocreagris intermedia*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Texella brevidenta*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella brevistyla*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella diplospina*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella fendi*	A Harvestman	TX	invertebrate
A	*Texella grubbsi*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella hardeni*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella renkesae*	A Cave Obligate Harvestman	TX	invertebrate
A	*Texella welbourni*	A Cave Obligate Harvestman	NM	invertebrate
A	*Tuberochernes ubicki*	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	*Tyrannochthonius troglodytes*	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	*Holospira millestriata*	A Terrestrial Snail	AZ	invertebrate
A	*Succinea pseudavara*	A Terrestrial Snail	KS, OK	invertebrate
A	*Apatania arizona*	A Caddisfly	AZ	invertebrate
A	*Chimarra holzenthali*	A Caddisfly	LA, TX	invertebrate
A	*Chimarra primula*	A Caddisfly	AZ	invertebrate
A	*Catapyrenium granulosum*	No common name	NM	lichens
A	*Xanthoparmelia dissensa*	No common name	AZ, NM	lichens
A	*Cirsium rusbyi*	Rusby's Thistle	AZ	plant
A	*Lupinus lemmonii*	Lemmon's Lupine	AZ	plant
A	*Aconitum infectum*	Arizona Monkshood	AZ	plant
A	*Centaurium blumbergianum*	Blumberg Rosita	TX	plant
A	*Crataegus nananixonii*	Nixon's Hawthorn	TX	plant
A	*Eleocharis brachycarpa*	Short-fruited Spikerush	TX	plant
A	*Opuntia martiniana*	Seashore Cactus	AZ	plant
A	*Tetraneuris verdiensis*	No common name	AZ	plant
A	*Fissidens littlei*	No common name	NM	plant
A	*Arabis tricornuta*	Rincon Mountain Rockcress	AZ	plant
A	*Camissonia gouldii*	Diamond Valley Suncup	AZ, UT	plant

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	*Lesquerella lata*	Lincoln County Bladderpod	NM	plant
A	*Dryopteris rossii*	Ros's Woodfern	AZ	plant
A	*Talinum gooddingii*	Goodding's Flameflower	AZ	plant
A	*Cuscuta dentatasquamata*	Los Pinitos Dodder	AZ	plant
A	*Potentilla albiflora*	White-flowered Cinquefoil	AZ	plant
A	*Agalinis calycina*	Leoncita False Foxglove	TX, NM	plant
A	*Arida mattturneri*	No Common Name	TX	plant
A	*Eriogonum terrenatum*	San Pedro River Wild Buckwheat	AZ	plant
A	*Hedyotis butterwickiae*	Mary's Bluet	TX	plant
A	*Machaeranthera gypsitherma*	Gypsum Hotspring Aster	NM, TX	plant
A	*Matelea texensis*	Trans Pecos Matelea	TX	plant
A	*Mentzelia memorabalis*	September 11 Stickleaf	AZ	plant
A*	*Paronychia maccartii*	Mccart's Whitlow-wort	TX	plant
A	*Perityle fosteri*	Foster's Rockdaisy	TX	plant
A	*Perityle vitreomontana*	Glass Mountains Rockdaisy	TX	plant
A	*Physalis latiphysa*	Broad-leaf Ground-cherry	AZ	plant
A*	*Pseudoclappia watsonii*	Watson's False-clappia	TX	plant
A	*Scutellaria laevis*	Smooth-stem Skullcap	TX	plant
A	*Senecio quaylei*	Quayle's Ragwort	TX	plant
A	*Yucca cernua*		TX	plant
A	*Camissonia confertiflora*	Bunch Flower Evening Primrose	AZ	plant
A	*Thelypodium tenue*	Fresno Creek Thelypody	TX	plant
B	*Menidia clarkhubbsi*	Texas Silverside	TX	vertebrate
B	*Syngnathus affinis*	Texas Pipefish	TX	vertebrate
B*	*Procambarus nueces*	Nueces Crayfish	TX	invertebrate
B*	*Isoperla jewetti*	A Stonefly	CO, NM, TX	invertebrate
B	*Juturnia tularosae*	Tularosa Juturnia	NM	invertebrate
B	*Ashmunella harrisi*	Goat Mountain Woodlandsnail	NM	invertebrate
B	*Humboldtiana agavophila*	Agave Threeband	TX	invertebrate
B	*Humboldtiana chisosensis*	Chisos Threeband	TX	invertebrate
B	*Hemigrapsus oregonensis*	Yellow Shore Crab	TX	invertebrate
B	*Streptocephalus thomasbowmani*	Bowman's Fairy Shrimp	NM	invertebrate
B	*Stygobromus blinni*	Blinn's Amphipod	AZ	invertebrate
B	*Stygobromus boultoni*	Boulton's Amphipod	AZ	invertebrate
B	*Stygobromus curroae*	Curro's Amphipod	NM	invertebrate
B	*Stygobromus dejectus*	Cascade Cave Amphipod	TX	invertebrate
B	*Stygobromus hadenoecus*	Devil's Sinkhole Amphipod	TX	invertebrate
B	*Stygobromus jemezensis*	Jemez Mountains Amphipod	NM	invertebrate
B	*Culoptila kimminsi*	A Caddisfly	AZ	invertebrate
B	*Culoptila moselyi*	A Caddisfly	AZ	invertebrate
B	*Ochrotrichia weddleae*	A Caddisfly	AR, OK	invertebrate
B*	*Fallceon eatoni*	A Mayfly	AZ	invertebrate
B	*Holospira animasensis*	Animas Mountains Tubeshell	NM	invertebrate
B	*Cicurina bandida*	Bandit Cave Spider	TX	invertebrate
B	*Cicurina browni*	A Cave Obligate Spider	TX	invertebrate
B	*Eidmannella bullata*	A Cave Obligate Spider	TX	invertebrate
B	*Eidmannella delicata*	A Cave Obligate Spider	TX	invertebrate
B	*Eidmannella nasuta*	A Cave Obligate Spider	TX	invertebrate
B	*Eidmannella reclusa*	A Cave Obligate Spider	TX	invertebrate
B*	*Donrichardsia macroneuron*	No Common Name	TX	plant
B	*Erigeron kuschei*	Chiricahua Fleabane	AZ	plant
B	*Perityle ambrosiifolia*	Lace-leaf Rockdaisy	AZ	plant
B	*Perityle ajoensis*	Ajo Rockdaisy	AZ	plant
B	*Townsendia smithii*	Black Rock Ground-daisy	AZ	plant
B*	*Proboscidea spicata*	Many-flowered Unicorn-plant	TX	plant
B	*Sclerocactus sileri*	Siler's Fishhook Cactus	AZ	plant
B	*Silene rectiramea*	Grand Canyon Catchfly	AZ	plant
B	*Viola guadalupensis*	Guadalupe Mountains Violet	TX	plant
B	*Cyperus cephalanthus*	Cryptic Flatsedge	LA, TX	plant
B	*Lechea mensalis*	Chisos Pinweed	TX	plant
C	*Procambarus steigmani*	Parkhill Prairie Crayfish	TX	invertebrate
C	*Houstonia correllii*	Correll's Bluet	TX	plant
C	*Panicum mohavense*	Mojave Panicgrass	AZ, NM	plant
C	*Paronychia lundelliorum*	Lundell's Nailwort	TX	plant
C	*Erigeron heliographis*	Heliograph Peak Fleabane	AZ	plant
D	*Erigeron hessii*	Hess' Fleabane	NM	plant
D	*Cymopterus beckii*	Pinnate Spring-parsley	AZ, UT	plant

Threats Analysis

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species, subspecies, or distinct population segment of vertebrate taxa may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information on threats to the 270 species, as presented in the petition and other readily available information at the time of the petition review, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that the present or threatened destruction, modification, or curtailment of the species' habitat or range is a threat to any of the 268 species in Categories A, B, and C. For one of the two plant species in Category D (Table 1), information related to habitat impacts at one or more occupied sites is presented.

Cymopterus beckii (pinnate spring-parsley) occurs in 1 area in Arizona and in 2 areas in Utah; within the 2 areas in Utah, it is known to occur at more than 40 sites, most discovered in the past 10 years. NatureServe (*http://www.natureserve.org/explorer/*) cites park visitor impacts, presumably trampling, as a potential threat at Capitol Reef National Park in Utah. However, following 3 years of intensive surveys in the 2 Utah areas where the species was found at 42 new sites, Clark (2002, p. 49) stated that the majority of the new sites are in remote locations with difficult accessibility that serves to protect the plants from human disturbance. No additional threats were identified for those new sites, and we found no information about threats to the species in Arizona (Arizona Game and Fish Department 2004, p. 4). Therefore, we find the petition and supporting information does not present substantial scientific or commercial information to indicate *C. beckii* is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to 268 of the 270 species. For one of the two plants in Category D (Table 1), information related to overutilization for recreational use at one or more occupied sites is presented. This information is discussed below.

Erigeron hessii (Hess' fleabane) is known from two sites in a Wilderness Area on the Gila National Forest in New Mexico. Plants are scattered in crevices of exposed rock (Nesom 1978, p. 443). The known sites are in a remote area (Sivinski 1998, p. 2). The NatureServe file contains a statement that at one of the sites, those plants that occur on a scenic overlook at the top of the outcrop that is occupied by the species may be trampled by hikers. No references are cited for this statement, and none of the references cited in the NatureServe file mention trampling by hikers (Kartez 1994; Nesom 1978; New Mexico Native Plant Protection Advisory Committee (NMPPAC 1984, p. 28); Sivinski 1998; Sivinski and Lightfoot 1995), although Nesom (1978, p. 443) and NMPPAC (1984, p. 28) state that at one site, it occurs along one or more trails. Robert Sivinski is the sole State-employed botanist in New Mexico responsible for rare plants in the State. He leads the New Mexico Rare Plant Technical Committee (NMRPTC), formerly the NMPPAC, which meets regularly to review and update information on the status of rare New Mexico plants. Sivinski (1998), which is cited in NatureServe, appeared on the NMRTPC Web site in 1998, but is currently not readily available. In the 2008 version on the NMRTPC Web site that was accessed by the Service on March 4, 2008 at *http://nmrareplants.unm.edu/rarelist.php,* it states that there are no current land uses that threaten the species and points out that it is within a Wilderness Area, where major ground disturbing activities are prohibited. The NMPPAC (1984, p. 28) stated that no threats were known. The NMRPTC 2008 Web site also provides a recommendation that surveys be conducted for the species at additional suitable rock outcrops in the area.

For *Erigeron hessii,* we find that although a specific threat to each species was mentioned in NatureServe for a single site or area, additional substantial information was presented in cited references or was readily available to us that the species is not threatened by overutilization for recreational purposes. Therefore, the petition does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to this species.

C. Disease or Predation

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that disease or predation is a threat to any of the 268 species in Categories A, B, and C. For the two remaining species in Category D, no information on threats due to disease or predation was presented. Therefore we find that the petition does not present substantial scientific or commercial information that the petitioned action may be warranted due to threats from this factor.

D. Inadequacy of Existing Regulatory Mechanisms

The petition discusses the lack of protection under the Act for the petitioned species, stating that unless a species is listed as threatened or endangered under the Act, it receives no protections from the statute. The petition provides no information addressing any other State or Federal regulations, and no information about the inadequacy of existing regulatory mechanisms.

The petitioner's claim that we could afford more protection to these petitioned species if they were listed under the Act does not provide substantial information that the existing regulatory mechanisms are inadequate. As the petitioner acknowledges, under 16 U.S.C. 1533(b)(1)(A), we must reach our determination solely on the basis of the best scientific and commercial data available. The petition did not present

any specific information related to other Federal, State, or local government regulatory mechanisms that may exist to provide regulatory protections for the 270 species or their respective habitats. Therefore, we conclude that the petition does not present substantial information that any of the 270 species may warrant listing due to inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

While we recognize that many of the species contained within the NatureServe database have limited distribution or small population size, limited distribution and population size were not identified as threats faced by the any of the 270 species in the petition, including all available references and the NatureServe species files and these two factors alone without elaboration may not be substantial information that may warrant listing under the Act. No other information that could be categorized under Factor E was presented in the petition or was readily available to us for the species in any of the four categories. Therefore, we conclude that the petition does not present substantial information that other natural or manmade factors affecting the species' continued existence are a threat to any of the 270 species.

Finding

We have reviewed and evaluated the five listing factors with regard to 270 of the 475 petitioned species, based on the information in the petition and the literature cited in the petition, and we have evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available to us. Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information that listing these 270 species as threatened or endangered under the Act may be warranted. For 8 of the 32 species we were petitioned in 2008 to emergency list, we also find that the 2007 petition, the 2008 petition, NatureServe, references cited in the petitions and in NatureServe, and information readily available to us did not present substantial information that emergency listing those 8 species is warranted. Although we will not commence a status review in response to 270 of the 475 species petitioned in 2007 and 8 of the 32 species petitioned in 2008, we will continue to accept information and materials regarding any of the 270 species at our Southwest Regional Ecological Services Office (*see* **ADDRESSES**). Further, as indicated previously, we will address the remaining 200 species in future findings.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Southwest Regional Ecological Services Office (*see* **ADDRESSES**).

Author

The primary authors of this document are the staff members of the Southwest Regional Ecological Services Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: December 23, 2008.

Kenneth Stansell,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–31454 Filed 1–5–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 3
Tuesday, January 6, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 31, 2008

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: PACA Customer Service Line Survey.

OMB Control Number: 0581–NEW.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA) 7 U.S.C. 499a-499s and PACA Regulations 7 CFR Part 46, establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. To better facilitate the delivery of services to the fruit and vegetable industry, the Agricultural Marketing Service (AMS) launched in early 2007 the PACA Branch's Customer Service Line, a fast and easy way for fruit and vegetable industry members to get answers to their questions on a wide range of PACA related issues. PACA will conduct a voluntary monthly telephone survey of its Customer Service Line customers to gauge its customers' current level of satisfaction.

Need and Use of the Information: The Customer Service Line provides callers with immediate access to experts who can offer advice on a variety of PACA topics including contract disputes, interpretation of inspection reports, guidance regarding a good delivery issue and license information. To provide AMS' PACA customers an opportunity to evaluate the timeliness, cost-effectiveness, accuracy, consistency, usefulness of services and professional service of PACA Branch employees, AMS will conduct a random telephone survey each month of the customers that utilize the Customer Service Line that month. The survey instrument will consist of up to nine questions and may be changed during the 3-year period in response to information gathered from survey participants. The information collected from the survey will allow AMS and PACA Branch management to determine customers' satisfaction with existing PACA services, compare results from year to year, and determine what new services customers desire.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 240.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 20.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. E8–31455 Filed 1–5–09; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0062]

Availability of Site-Specific Environmental Assessment, Pest Risk Assessment, and Finding of No Significant Impact for the Interstate Movement of Garbage From Hawaii to Oregon

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a site-specific environmental assessment, pest risk assessment, and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a request to allow the interstate movement of garbage from Hawaii to a landfill in the State of Oregon. The environmental analysis has been prepared to determine whether the request is consistent with the environmental effects and impacts analyzed in our February 2008 regional programmatic environmental assessment. The pest risk assessment evaluates the risks associated with the interstate movement of garbage from Hawaii to Oregon. Based on the finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Associate Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 in order to protect

against the introduction into and dissemination within the United States of plant and animal pests and diseases.

On March 13, 2008, we published in the **Federal Register** (73 FR 13525, Docket No. APHIS–2007–0070) a notice in which we announced the availability, for public review and comment, of a regional programmatic environmental assessment relative to the interstate movement of municipal solid waste from Hawaii to landfills in the States of Idaho, Oregon, and Washington. On June 18, 2008 (73 FR 34700–34701, Docket No. APHIS–2007–0070), we published a followup notice in which we announced the availability of our final regional programmatic environmental assessment and finding of no significant impact.

In our March 2008 notice, we stated that as new requests to move municipal solid waste from Hawaii are received, a specific environmental analysis will be prepared relative to each request to determine whether the request is consistent with the environmental effects and impacts analyzed in our regional programmatic environmental assessment. We also stated that the specific environmental analyses prepared for each new request to move municipal solid waste will be made available for a 30-day public comment period, after which APHIS will announce its environmental and pest risk decision regarding the new municipal solid waste movement proposal.

In accordance with the process described in our March 2008 notice, on July 31, 2008, we published in the **Federal Register** (73 FR 44702–44703, Docket No. APHIS–2008–0062) a notice [1] in which we announced the availability, for public review and comment, of a site-specific environmental assessment, titled ''Site Specific Environmental Assessment for Off Island Transfer Proposal to Transport Municipal Solid Waste from Hawaii to Columbia Ridge Landfill,'' and the accompanying pest risk assessment, titled ''The Risk of Introducing Pests to Gilliam County, Oregon via Hawaiian Plastic-Baled Municipal Solid Waste'' (June 2008).

We solicited comments on the environmental assessment and the pest risk assessment for 30 days ending September 2, 2008. We received six comments by that date. In response to these comments, we have prepared a comment summary and response document that is available for review on the Regulations.gov Web site (*see* footnote 1). No changes to the environmental assessment or pest risk assessment were determined to be necessary in response to these comments.

In this document, we are advising the public of our pest risk decision and finding of no significant impact regarding the interstate movement of garbage from Hawaii to a landfill in the State of Oregon. This decision is based upon the site-specific environmental assessment, titled ''Site Specific Environmental Assessment for Off Island Transfer Proposal to Transport Municipal Solid Waste from Hawaii to Columbia Ridge Landfill,'' and the accompanying pest risk assessment, titled ''The Risk of Introducing Pests to Gilliam County, Oregon via Hawaiian Plastic-Baled Municipal Solid Waste'' (June 2008).

The site-specific environmental assessment, pest risk assessment, and finding of no significant impact may be viewed on the Regulations.gov Web site (*see* footnote 1). Copies of the site-specific environmental assessment, pest risk assessment, and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead at (202) 690–2817 to facilitate entry into the reading room. You may request paper copies of the site-specific environmental assessment, pest risk assessment, and the finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document(s) you wish to receive when requesting copies.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS's NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–31457 Filed 1–5–09; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the site-specific environmental assessment, the pest risk assessment, and the finding of no significant impact, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0062.*

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California to conduct routine business associated with requesting proposals consistent with the Secure Rural Schools and Community Self-Determination Act.

DATES: The meeting will be held January 19, 2009 from 4:30 p.m. until 6:30 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Davida Carnahan, Forest RAC Coordinator, Klamath National Forest, (530) 841–4485 or electronically at *dcarnahan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 23, 2008.

Patrica A. Grantham,

Designated Federal Official.

[FR Doc. E8–31222 Filed 1–5–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: White Mountain National Forest, USDA Forest Service.

ACTION: Notice.

SUMMARY: The White Mountain National Forest proposes to add three sites to the Recreation Fee Program. Fees are determined based on the level of amenities and services provided, cost of operation, maintenance, and market assessment. Funds from fees will be

used for the continued operation and maintenance of the sites.

The fees proposed are as follows: Cabot Cabin would have an overnight rental fee of $30. There would be a $10 fee for overnight camping at Sawyer Pond Tentsite; and Zealand Picnic Area would be added to the Forest-wide Recreation Pass program.

National recreation passes such as the Interagency Annual Pass, Senior Pass, Access Pass, or White Mountain National Forest Annual Pass would be valid for day use fees at these sites.

DATES: Comments on the proposal will be accepted through July 15, 2009. Cabot Cabin will become available for rent January 1, 2010 through the National Recreation Reservation Service. Fees for Sawyer Pond and Zealand Picnic Area are payable on site and will go into effect May 15, 2010, pending a recommendation from the Eastern Region Recreation Resource Advisory Committee (RRAC).

ADDRESSES: Forest Supervisor, White Mountain National Forest, 719 No. Main St., Laconia, NH 03246.

FOR FURTHER INFORMATION CONTACT: Marianne Leberman, Recreation Wilderness Program Leader (603) 528–8751. Information about the proposed fee changes can also be found on the White Mountain National Forest Web site: *http://www.fs.fed.us/r9/white.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Public Law 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Prior to these fees going into effect, the White Mountain National Forest will present this proposal to the Eastern Region Recreation Resource Advisory Committee (RRAC). The Federal Lands Recreation Enhancement Act requires a recommendation from the Eastern Region Recreation Resource Advisory Committee (RRAC) prior to a decision and implementation.

People wanting to rent Cabot Cabin will need to do so through the National Recreation Reservation Service, at *http://www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $10 fee for reservations.

Dated: December 23, 2008.

Thomas G. Wagner,

White Mountain National Forest Supervisor.

[FR Doc. E8–31223 Filed 1–5–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–849]

Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Notice of Extension of Time Limit for Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 6, 2009.

FOR FURTHER INFORMATION CONTACT: Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4852.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 2008, the Department of Commerce (''Department'') published the preliminary results of the new shipper review of the antidumping duty order on certain cut–to-length carbon steel from the People's Republic of China, covering the period November 1, 2006, through October 31, 2007, for the following exporter Hunan Valin Xiangtan Iron & Steel Co. Ltd. (''Valin Xiangtan''). *See Certain Cut–to-Length Carbon Steel from the People's Republic of China: Preliminary Results of New Shipper Review*, 73 FR 67124 (November 13, 2008) (''*Preliminary Results*''). The final results are currently due on February 4, 2009.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the 90-day period for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department has extended the deadline for parties to submit publicly available information to value factors of production, and the deadline for parties to submit case briefs and rebuttal briefs in order to address several issues raised by interested parties. As a result of these extensions and the complex issues raised in this new shipper review, including by–product offsets, the Department determines that this new shipper review is extraordinarily complicated and it cannot complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 30 days from February 4, 2009, until Friday, March 6, 2009, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(2)(B) and 777(i)(1) of the Act.

Dated: December 29, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–31459 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for the M/V ATHOS I Oil Spill; Request for Comments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Natural Resource Trustees (Trustees) for this project (identified below) have written a Draft Damage Assessment and Restoration Plan and Environmental Assessment (Draft DARP/EA) that describes proposed alternatives for restoring natural resource injuries and compensating for recreational losses resulting from the November 26, 2004, oil spill at a refinery in Paulsboro, New Jersey, into the Delaware River. The purpose of this notice is to inform the public of the availability of the Draft DARP/EA and to seek written comments on the proposed restoration alternatives.

DATES: Comments on the Draft DARP/EA must be submitted in writing on or before February 20, 2009.

ADDRESSES: Written comments on the Draft DARP/EA should be submitted to: NOAA/GCNR, Room 15107, 1315 East West Highway, Silver Spring, MD 20910, FAX: 301–713–1229. Alternatively, comments may be submitted electronically to the following e-mail address: *NOS.AthosComments@noaa.gov*. All comments received, including names

and addresses, will become part of the public record.

The Draft DARP/EA is available at: *http://www.darrp.noaa.gov/northeast/athos/index.html*.

FOR FURTHER INFORMATION CONTACT: Linda Burlington, NOAA/GCNR, Room 15107, 1315 East West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: On November 26, 2004, the M/T ATHOS I (*Athos*) struck a large, submerged anchor while preparing to dock at a refinery in Paulsboro, New Jersey. The anchor punctured the vessel's bottom, resulting in the discharge of nearly 265,000 gallons of crude oil into the Delaware River and nearby tributaries. Federal, state, and local agencies responded to the incident to supervise and assist in clean-up and begin assessing the impact of the spill on natural resources. Under the federal Oil Pollution Act (OPA), two federal government agencies—the National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce, and U.S. Fish and Wildlife Service (USFWS), of the Department of the Interior—and the three affected states—New Jersey (NJ), Pennsylvania (PA), and Delaware (DE)—are responsible for restoring natural resources injured by the *Athos* spill with funding from the responsible party (RP) or, where an RP does not exist or exceeds its limit of liability, the Oil Spill Liability Trust Fund (OSLTF) administered by the U.S. Coast Guard (USCG).

The two federal agencies and the three affected states, acting as Trustees on the public's behalf, have conducted a natural resource damage assessment (NRDA) to determine the nature and extent of natural resource losses resulting from this incident and the restoration actions needed to restore these losses. The NRDA was conducted using the OPA NRDA regulations found at 15 CFR Part 990. On the basis of data provided by the NRDA, the *Athos* Trustees prepared this Draft Damage Assessment and Restoration Plan/Environmental Assessment (Draft DARP/EA) to consider restoration alternatives. The purpose of presenting this Draft DARP/EA for comment is to inform the public about the NRDA and restoration planning efforts that were conducted following the oil spill incident. Further, the Trustees seek comments on the proposed restoration alternatives presented in this Draft DARP/EA, and will consider written comments received during the public comment period before developing the Final Restoration Plan (Final Plan).

Injury assessments conducted by the Trustees and other experts determined that the following natural resources and recreational services were affected by the spill: Shoreline (including tributary and non-tributary losses); aquatic; birds; and recreational services (lost use). The four injury reports are:

- Shoreline Injury Assessment: M/T ATHOS I Oil Spill
- Bird and Wildlife Injury Assessment: M/T ATHOS I Oil Spill, Delaware River System
- Aquatic Injury Assessment: M/T ATHOS I Oil Spill, Delaware River System
- Lost Use Valuation Report

These injury assessment reports are now available in the Administrative Record at *http://www.darrp.noaa.gov/northeast/athos/admin.html*. The Trustees considered numerous restoration alternatives to compensate the public for spill-related injuries and to restore similar types of resources, and the services provided by the resources, that were injured by the spill. After evaluating the proposals, the Trustees identified and recommend each of the following preferred restoration projects for implementation once the DARP is finalized. For your information, a summary is provided below of the nine restoration projects proposed by the trustees. When submitting comments on these nine projects, please refer to the specific details outlined in the DARP. If, based on comments received, significant changes are required for any of the proposed projects, an alternative plan will be proposed for public consideration.

(1) *Freshwater tidal wetlands restoration at John Heinz National Wildlife Refuge (PA)* The Trustees propose to restore 7 acres of freshwater tidal wetland to benefit 56 acres within John Heinz National Wildlife Refuge to compensate for tributary losses. This project would restore tidal exchange to the proposed site through tidal channels, shallow pools, and shrub/scrub wetland habitat.

(2) *Create oyster reef sanctuaries (NJ, DE)* The Trustees propose to create roughly 78 acres of oyster reef sanctuary in the Delaware River to compensate for injuries to aquatic resources, diving birds, and gulls. The oyster reefs enhance benthic communities, increase aquatic food for fish and birds, and improve water quality by filtering out sediments and pollutants from the water column.

(3) *Darby Creek dam removal and habitat restoration (PA)* The Trustees propose to remove three dams from Darby Creek in southeastern Pennsylvania to open up an additional 2.6 miles of habitat to anadromous fish, and restore about 10 acres of riparian habitat along the creek edges. Dam removal and riparian habitat projects would compensate for tributary losses.

(4) *Habitat restoration at Mad Horse Creek (NJ)* The Trustees propose to restore 62.5 acres of degraded wetland and create 35 acres of wet meadow and 100 acres of grassland at state-owned property on Mad Horse Creek (NJ). The proposed wetland restoration would compensate for non-tributary shoreline losses and a portion of bird loss. The increase in upland vegetation (wet meadow and grassland habitat) would serve as food sources that can reasonably be expected to enhance bird biomass, thereby compensating for a portion of the total bird loss.

(5) *Shoreline restoration at Lardner's Point (PA)* The Trustees propose to restore shoreline through the demolition of existing structures, import of fill material, grading of the site to restore tidal inundation, and creation of intertidal marsh and wet meadow habitat. This shoreline restoration project would have multiple benefits in the urban part of the river that was heavily impacted by the spill.

(6) *Blackbird Reserve Wildlife Area Pond and Pasture Enhancement (DE)* The Trustees propose to excavate two shallow wetland ponds in former agricultural areas, convert 16 acres of agricultural lands to cool-season grass pasture, and establish 24 acres of food plots by modifying existing agricultural practices. Conversion of existing agricultural land to pond and pasture habitat and modification of existing agricultural practices would provide resting and foraging areas targeted to migratory geese.

Improve recreational opportunities (PA, NJ, DE) The Trustees propose to implement three projects to address the estimated 41,709 river trips that were affected by the spill:

(7) Improve the Stow Creek (NJ) boat ramp;

(8) Create an additional breakwater at Augustine Boat Ramp (DE) to address ongoing shoaling immediately offshore of the boat ramp; and

(9) Enhance the recreational trail on Little Tinicum Island (PA).

The U.S. Coast Guard (USCG) has determined that the Responsible Party has exceeded its limit of liability under OPA. Therefore, the Final Plan will be submitted to the Oil Spill Liability Trust Fund (OSLTF) as part of a claim for funds to implement the selected restoration projects. The OSLTF is administered by the USCG. It was established and is maintained by a fee

paid by industry based on the amount of oil shipped.

Administrative Record

Pursuant to the OPA NRDA regulations, the Trustees have developed an Administrative Record to support their restoration planning decisions and inform the public of the basis of their decisions. Additional information and documents, including public comments received on this Draft DARP/EA, the Final Restoration Plan, and other related restoration planning documents, will also become part of the Administrative Record, and will be submitted to a public repository upon their completion.

The documents comprising the public record (Administrative Record) can be viewed at *http://www.darrp.noaa.gov/northeast/athos/admin.html*.

Dated: December 19, 2008.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. E8–31042 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM52

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held January 26–29, 2009.

ADDRESSES: The meetings will be held at the Hollywood Casino, 711 Hollywood Blvd., Bay St. Louis, MS 39520.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Interim Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, January 28, 2009

The Council meeting will begin at 1 p.m. with a review of the agenda and minutes. From 1:15 p.m. - 5:30 p.m., the Council will receive public testimony on exempted fishing permits (EFPs), if any; the Final Aquaculture Fishery Management Plan (FMP), Final Reef Fish Amendment 29; and hold an Open Public Comment Period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period. From 5:30 p.m. - 6:30 p.m., the Council will review and discuss the report of the Joint Reef Fish/Mackerel/Red Drum Committee.

Thursday, January 29, 2009

From 8:30 a.m. - 12 p.m. and 1:30 p.m. - 4:30 p.m., the Council will continue to review and discuss reports from the committee meetings as follows: Ad Hoc Allocation; Reef Fish Management; Mackerel Management; Joint Scientific and Statistical Committee (SSC) Selection/Administrative Policy; Southeast Data and Review (SEDAR) Selection; Shrimp Management; Habitat Protection and Sustainable Fisheries/Ecosystem. From 4:30 p.m. - 4:45 p.m., the Council will Review/Approve the South Atlantic Fishery Management Council (SAFMC) Comprehensive Ecosystem-Based Amendment. Other Business items will follow from 4:45 p.m. - 5:15 p.m. The Council will conclude its meeting at approximately 5:15 p.m.

Committees

Monday, January 26, 2009

8:30 a.m. - 9 a.m. - CLOSED SESSION - The SEDAR Selection Committee and Full Council will meet to select participants for the Gag and Red Grouper SEDAR Assessment Update and the Black Grouper Data Workshop.

9 a.m. - 12 p.m. - CLOSED SESSION - The Budget/Personnel and Full Council will Interview and select the Executive Director.

1:30 p.m. - 2:30 p.m. - The Ad Hoc Allocation Committee will meet to discuss the Allocation Policy and the next steps.

2:30 p.m. - 5:30 p.m. - The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Final Aquaculture FMP.

5:30 p.m. - 6 p.m. - The Sustainable Fisheries/Ecosystem Committee will meet to receive a status report on the Generic Annual Catch Limit/Accountability Measures (ACL/AM) Amendment.

Tuesday, January 27, 2009

8:30 am - 12 p.m. and 1:30 p.m. - 3 p.m. - The Reef Fish Management Committee will meet to discuss the Options Paper on Amendment/Regulatory Amendment and Draft Environmental Impact Statement (DEIS) to address Longline/Turtle Interactions; Results of Referendum and Final Action on Reef Fish Amendment 29; White Paper on Pros and Cons of Red Snapper For-Hire Sector Management; and Consideration of (re)allocation Issues for those Species in Reef Fish Amendments 30A and 30B using the Allocation Policy. The committee will also receive a presentation on a device to reduce release mortality and may discuss goliath grouper activities.

3 p.m. - 4 p.m. - The Habitat Protection Committee will discuss summaries of the Habitat Protection Advisory Panel (AP) Meetings.

4 p.m. - 6:30 p.m. - The Mackerel Management Committee will meet to discuss the King Mackerel Stock Assessment as well as SSC and Mackerel AP recommendations and consider future management strategies.

6:30 p.m. - 7:30 p.m. - There will be an Informal Open Public Question and Answer Session.

Wednesday, January 28, 2009

8:30 a.m. - 9 a.m. - The Shrimp Management Committee will meet to review the results of the 2008 Cooperative Texas Closure and consider recommendations for 2009.

9 a.m. - 11:30 a.m. - The Joint SSC Selection/Administrative Policy Committee will meet to discuss the National SSC Report; Council policies in Statement of Organization Practices and Procedures (SOPPs); and consideration of disbanding the Operator Permits Committee.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion

relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 31, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–31438 Filed 1–5–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM49

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Squid, Mackerel, and Butterfish Committee will hold a public meeting regarding Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

DATES: The meeting will be held on Tuesday, January 27, 2009, from 8 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI 02886; telephone: (401) 738–4000).

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop and finalize Amendment 11 alternatives. Amendment 11 may include alternatives concerning: instituting a limited access system in the Atlantic mackerel fishery; updating essential fish habitat (EFH) descriptions and identification; minimizing fishing gear impacts on Loligo egg EFH; limiting at-sea processing of Atlantic mackerel; and establishing Annual Catch limits (ACLs) and Accountability Measures (AMs) in the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: December 30, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–31265 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM51

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Scientific and Statistical Committee (SSC) will hold a public meeting.

DATES: The meeting will be held on Thursday, January 22, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Courtyard Baltimore BWI Airport Hotel, 1671 West Nursery Rd., Linthicum, MD 21090; telephone: (410) 859–8855.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss SSC organizational details for the upcoming calendar year. Topics to be discussed include a summary of the recent National SSC Workshop, SSC terms of reference/defining role of the SSC, elements to consider in SSC specification of ABC, incorporating scientific uncertainty in SSC advice, MAFMC SSC operating procedures and 2009 schedule, species/assessment assignments, election of SSC Vice-Chair, and review of MAFMC implementation of ACLs and AMs.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: December 30, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–31338 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM53

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, January 28, 2009, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport Hotel, 1850 Post Road, Warwick, RI 02886; telephone: (401) 824–0649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Continue development of management measures and alternatives to be considered further in Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP); develop Committee recommendations for Council consideration in February 2009; identify issues that may require further guidance from the Council;

2. Continue to discuss stakeholder proposals/ideas regarding a catch monitoring program for the Atlantic herring fishery; develop management alternatives related to catch monitoring, including but not limited to: specific monitoring and reporting requirements for herring vessels and processors, observer coverage and at-sea monitoring, shoreside/dockside monitoring and sampling, vessel monitoring system (VMS) requirements, as well as other measures that were suggested for consideration during the scoping process and/or in the stakeholder proposals;

3. Review and discuss available analysis of river herring bycatch in the Atlantic herring fishery; develop recommendations regarding management measures to be considered in Amendment 4;

4. Review information related to at-sea monitoring and reporting, which may include available observer data, analyses related to a sampling design for an observer program, and applications for electronic monitoring and reporting; develop recommendations as appropriate;

5. Review and discuss management measures to improve at-sea monitoring;

6. Address any other issues and develop recommendations related to Amendment 4 to the Herring FMP, possibly including annual catch limits (ACLs) and accountability measures (AMs), and criteria for midwater trawl access to groundfish closed areas.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 31, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–31439 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM43

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings regarding its Fishery Ecosystem Plan (FEP) and Comprehensive Ecosystem-Based Amendment 1. The Council will also conduct scoping meetings regarding a Comprehensive Annual Catch Limit (ACL) Amendment, Amendment 18 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic, and a Comprehensive Ecosystem-Based Amendment 2. See **SUPPLEMENTARY INFORMATION**.

DATES: The series of 5 public hearings and scoping meetings will be held January 26, 2009 through February 5, 2009. All scoping meetings will be open from 3 p.m. until 7 p.m. Council staff will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing topics and scoping issues for Council consideration. Local Council representatives will attend the meetings and take public comment. Written comments must be received in the South Atlantic Council's office by 5 p.m. on February 6, 2009. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *FEP2009Comments@safmc.net* for the Fishery Ecosystem Plan; *CEBA2009Comments@safmc.net* for the Comprehensive Ecosystem-Based Amendment 1; *CompACLScoping@safmc.net* for the Comprehensive ACL Amendment; *SGAm18Scoping@safmc.net* for Amendment 18 to the Snapper Grouper FMP; and *CEBA2Scoping@safmc.net* for the Comprehensive Ecosystem-Based Amendment 2. Written comments must be received in the South Atlantic Council's office by 5 p.m. on February 6, 2009.

Copies of the scoping documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366 or toll free at (866) SAFMC-10. Copies will also be available online at *www.safmc.net* as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366; fax: (843) 769-4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Locations:

The scoping meetings will be held at the following locations:

1. January 26, 2009 - Hilton Garden Inn, 5265 International Blvd., North Charleston, SC 29418, telephone: (843) 308-9330;

2. January 27, 2009 - Bridge Pointe Hotel, 101 Howell Road, New Bern, NC 28582, telephone: (252) 636-3637;

3. February 3, 2009 - Key Largo Grande, 97000 South Overseas Highway, Key Largo, FL 33037, telephone: (305) 852-5553;

4. February 4, 2009 - Doubletree Hotel, 2080 N. Atlantic Avenue, Cocoa Beach, FL 32931, telephone: (321) 783-9222;

5. February 5, 2009 - Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322, telephone: (912) 748-8888.

As part of the meeting schedule, a second round of public hearings will be held on the Council's Fishery Ecosystem Plan (FEP) and Comprehensive Ecosystem-Based Amendment 1 (CE-BA). The Council held an earlier round of public hearings in May 2008. The Council is developing the FEP to act as a source document to provide a greater degree of guidance on incorporation of fishery, habitat, and ecosystem considerations into management actions. The CE-BA includes alternatives to amend the Coral FMP to establish deepwater coral Habitat Areas of Particular Concern (HAPCs) and address information updates and spatial requirements of the Essential Fish Habitat final rule. In addition, the CE-BA includes alternatives to amend the Golden Crab FMP to establish allowable golden crab and deepwater shrimp fishing areas. Areas being considered for designation as HAPCs include: (a) Cape Lookout Lophelia Banks HAPC, (b) Cape Fear Lophelia Banks HAPC, (c) Blake Ridge Diapir, (d) the Stetson Reefs, Savannah and East Florida Lithoherms, and Miami Terrace HAPC, and (e) Portales Terrace HAPC.

The public scoping meetings will address overlapping fisheries issues for the South Atlantic region. Items under consideration for public scoping include a Comprehensive Annual Catch Limit Amendment to specify Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), and Accountability Measures (AMs) for species within the Council's area of jurisdiction currently not undergoing overfishing. The amendment would also establish regulations to limit total mortality (landings and discards) to the Annual Catch Target. Measures to limit total mortality may include, but are not limited to: (a) commercial quotas and recreational allocations, (b) trip limits, (c) vessel limits, (d) size limits, (e) bag limits, (f) closed areas, (g) closed seasons, (h) permit endorsements, (i) fishing year changes, etc. The amendment also addresses spiny lobster fishery issues.

Amendment 18 to the Snapper Grouper Fishery Management Plan is also included as part of public scoping. Actions proposed in Amendment 18 include but are not limited to: options to limit participation and effort in the golden tilefish and black sea bass fisheries, extension of the fishery management unit range and designation of Essential Fish Habitat (EFH), changes to the golden tilefish fishing year, consideration of regional/state management of the snowy grouper quota, consideration of regional/state management of the gag recreational allocation, improvements to data reporting, and modifications to the current Wreckfish ITQ (Individual Transferable Quota) Program.

The Council is also scoping items to include in Comprehensive Ecosystem-Based Amendment 2. These include updating EFH and EFH Habitat Areas of Particular Concern as required by the Final Rule and modifications to the harvest of octocorals and Sargassum.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the start of each meeting.

Dated: December 30, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–31262 Filed 1–5–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) To Analyze the Impacts of Grow the Army and Facilities Expansion at the Presidio of Monterey, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army intends to prepare an EIS for the proposed expansion of the Defense Language Institute Foreign Language Center at the Presidio of Monterey. This EIS is being prepared to analyze the potential impacts of Grow the Army and the resulting increases of student, faculty, staff populations and the construction of additional facilities to accommodate the increased population. This proposed EIS is required to support the proposed development of new facilities warranted under the new Proficiency Enhancement Program standards for foreign language training as mandated by the Department of Defense. The proposed action would include the construction of new facilities at both the Presidio and the Ord Military Community.

ADDRESSES: Written comments should be forwarded to the Department of the Army, U.S. Army Garrison Presidio of Monterey, Directorate of Public Works, Master Plans (Attention: R. Guidi), PO Box 5004, Presidio of Monterey, California 93944–5004; e-mail at *robert.g.guidi@us.army.mil*; or fax at 831–242–7019.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Reese, Presidio of Monterey, Directorate of Public Works, Environmental Division at (831) 242–7925 (DSN 768–7925) or Mr. James Willison, Presidio of Monterey Director, Public Works (831) 242–7916 (DSN 768–7928).

SUPPLEMENTARY INFORMATION: The proposed actions at the Presidio of Monterey and Ord Military Community would support the initiatives of Grow the Army and would have both direct and indirect impacts on the environment. The areas potentially affected would include the installation (Presidio of Monterey and Ord Military Community), the neighboring cities and surrounding communities, and Monterey County. The objective of this analysis is to provide a comprehensive EIS that functions as a planning tool and incorporates public comments and information into the decision-making process. Initial screening of the proposed action and alternatives for potentially significant environmental impacts suggests the following resource areas would have the greatest potential impacts and require more comprehensive analysis in this proposed EIS: Aesthetics, housing, land use, population, public services, endangered species and critical habitat, traffic circulation and water usage.

Alternatives: The proposed action and alternatives would include, but may not be limited to, the following development scenarios: (1) *No Action:* The existing facilities maintenance, improvement, and/or upgrades at the Presidio of Monterey would remain without new facilities to support the Grow Army initiatives. The Ord Military Community would continue to serve as a residential housing community for military personnel and their families; (2) *Alternative 1:* Improvements to the Presidio of Monterey—proposes that all primary and support facilities for the Defense Language Institute Foreign

Language Center would remain within the appropriate land use categories on the Presidio of Monterey. This alternative proposes to consolidate and focus new facility infrastructure within a centralized campus theme and would include new barracks, dining hall, general instruction buildings and recreation facilities; (3) *Alternative 2:* Improvement and Expansion of Facilities at the Presidio of Monterey and Ord Military Community. Alternative 2 is similar to Alternative 1 but instead of locating all new facilities at the Presidio of Monterey this proposes construction of new barracks, dining hall, general instructional buildings and recreation facilities at the Ord Military Community in addition to the Presidio of Monterey.

Federal, state, and local agencies, special interest groups and the public are invited to participate in the public scoping process for the preparation or this EIS. Notification of the times and locations for the scoping meetings will be published in local newspapers. Written comments to be analyzed in the Draft EIS will be accepted within 30 days of publication of this Notice of Intent in the **Federal Register** or 15 days after the last public scoping meeting, whichever is later.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health).

[FR Doc. E8–30907 Filed 1–5–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 31, 2008.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Assistance General Provisions—Subpart J—Approval of Independently Administered Tests.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 360,010.
Burden Hours: 181,110.

Abstract: This request is for approval of the reporting requirements that are contained in the Student Assistance General Provisions regulations—Subpart J, governing the approval of State processes for assessments used to measure a student's skills and abilities, as well as private test publisher submissions for approval by the Secretary and the administration of tests that may be used to determine a student's eligibility for assistance for the Title IV student financial assistance programs authorized under the Higher Education Act of 1965, as amended (HEA). The Secretary publishes a list of approved tests which can be used to establish the ability to benefit for a student who does not have a high school diploma or its equivalent for Title IV, HEA eligibility purposes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3877. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–31425 Filed 1–5–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 31, 2008.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Assistance General Provisions—Subpart I—Immigration—Status Confirmation.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 78,848.
Burden Hours: 19,712.

Abstract: Collection of this information enables the Secretary to determine if a noncitizen applicant for Title IV, HEA benefits is an eligible student as defined in section 484(a)(5) of the HEA. The ability to make this determination reduces the potential for fraud and abuse in the Title IV, HEA programs caused by ineligible aliens receiving Federal student financial assistance. By reducing the potential for fraud and abuse, the Secretary is better able to safeguard Federal student financial aid dollars for the intended purpose of providing educational opportunities to U.S. citizens or noncitizens with Title IV, HEA—eligible immigration credentials.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3897. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–31426 Filed 1–5–09; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Improving Literacy Through School Libraries Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.364A.

DATES: *Applications Available:* January 6, 2009.

Deadline for Transmittal of Applications: March 6, 2009.

Deadline for Intergovernmental Review: May 5, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; well-equipped, technologically advanced school library media centers; and well-trained, professionally certified school library media specialists.

Eligible local educational agencies (LEAs) may use funds for the following activities: purchasing up-to-date school library media resources, including books; acquiring and using advanced technology that is integrated into the curricula of the school to develop and enhance the information literacy, information retrieval, and critical-thinking skills of students; facilitating Internet links and other resource-sharing networks; providing professional development for school library media specialists and providing activities that foster increased collaboration among library specialists, teachers, and administrators; and providing students with access to school libraries during non-school hours, including before and after school, weekends, and summer vacations. (20 U.S.C. 6383(g))

Program Authority: 20 U.S.C. 6383.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final clarification of eligible local activities, published in the **Federal Register** on April 5, 2004 (69 FR 17894).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $19,145,000 for awards for the Improving Literacy Through School Libraries program for FY 2009, of which we intend to use an estimated $18,547,901 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.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $30,000–$500,000.

Estimated Average Size of Awards: $231,849

Estimated Number of Awards: 80.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools and State-administered schools that are considered LEAs under State law, in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line based on the most recent satisfactory data available from the U.S. Census Bureau at the time this notice is published. These data are Small Area Income and Poverty Estimates for school districts for income year 2007. A list of LEAs with their family poverty rates (based on these Census Bureau data) is posted on our Web site at *http://www.ed.gov/programs/lsl/eligibility.html.*

Note: Charter schools and State-administered schools must include

documentation from their State educational agency (SEA) confirming eligibility for this program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Funds made available under this program must be used to supplement, and not supplant, other Federal, State, and local funds expended to carry out activities relating to library, technology, or professional development activities (20 U.S.C. 6383(i)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use either of the following addresses: *http://www.grants.gov* or *http://www.ed.gov/programs/lsl/applicant.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: *http://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 or competition as follows: CFDA number 84.364A.

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 the person or team listed under *Accessible Format* in section VIII of this notice.

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 is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 15 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the one-page abstract; the other attachments, including the resumes and the endnotes, if applicable; and the assurances and certifications. However, the page limit does apply to all of the application narrative section. The SEA documentation of eligibility is not counted toward the page limit.

Our reviewers will not read any pages of your application that exceed the page limit. Appendices to the narrative are not permitted, with the exception of resumes and endnotes. None of the material sent as appendices to the narrative, with the exception of resumes and endnotes, will be sent to the reviewers.

3. *Submission Dates and Times:*

Applications Available: January 6, 2009.

Deadline for Transmittal of Applications: March 6, 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 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: May 5, 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:* We reference 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 Improving Literacy Through School Libraries competition, CFDA number 84.364A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://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 Improving Literacy Through School Libraries competition at *http://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 84.364, not 84.364A).

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 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.

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: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E244, Washington, DC 20202–6200. FAX: (202) 260–8969.

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 84.364A), 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 84.364A), 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 maximum score for all of these criteria is 110 points. The maximum score for each criterion is indicated in parentheses. The selection criteria for this competition are from section 1251 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6383) and 34 CFR 75.210 and are as follows:

(a) *Meeting the purpose of the statute (10 points).* How well the proposed project addresses the intended outcome of the statute to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; a well-equipped, technologically advanced school library media center; and well-trained, professionally certified school library media specialists.

(b) *Need for school library resources (10 points).* How well the applicant demonstrates the need for school library media improvement, based on the age and condition of school library media resources, including: book collections; access of school library media centers to advanced technology; and the availability of well-trained, professionally certified school library media specialists in schools served by the applicant.

(c) *Use of funds (50 points).* How well the applicant will use the funds made available through the grant to carry out one or more of the following activities that meet its demonstrated needs:

(1) Acquiring up-to-date school library media resources, including books.

(2) Acquiring and using advanced technology, incorporated into the curricula of the school, to develop and enhance students' skills in retrieving and making use of information and in critical thinking.

(3) Facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries.

(4) Providing professional development (as described in the notice of final clarification of eligible local activities published April 5, 2004, in the **Federal Register** (69 FR 17894)), for school library media specialists that is designed to improve literacy in grades K–3, and for school library media specialists as described in section 1222(d)(2) of the ESEA (20 U.S.C. 6383), and providing activities that foster increased collaboration between school library media specialists, teachers, and administrators.

(5) Providing students with access to school libraries during non-school hours, including the hours before and after school, during weekends, and during summer vacation periods.

(d) *Use of scientifically based research (10 points).* How well the applicant will use programs and materials that are grounded in scientifically based research, as defined in section 9101(37) of the ESEA (20 U.S.C. 7801(37)), in carrying out one or more of the activities described under criterion (c).

(e) *Broad-based involvement and coordination (10 points).* How well the applicant will extensively involve school library media specialists, teachers, administrators, and parents in the proposed project activities and effectively coordinate the funds and activities provided under this program with other literacy, library, technology, and professional development funds and activities.

(f) *Evaluation of quality and impact (10 points).* How well the applicant will collect and analyze data on the quality and impact of the proposed project activities, including data on the extent to which the availability of, the access to, and the use of up-to-date school library media resources in the elementary schools and secondary schools served by the applicant increase and on the impact of the project on improving the reading skills of students.

(g) *Quality of project personnel (10 points).* The quality of the personnel who will carry out the proposed project, including the following factors: (1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2) The qualifications, including relevant training and experience, of the project director or principal investigator.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is the equitable distribution of grants across geographic regions and among LEAs serving urban and rural areas (20 U.S.C. 6383(e)(3)).

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. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* In response to the Government Performance and Results Act of 1993 (GPRA), the Department developed three measures for evaluating the overall effectiveness of the Improving Literacy Through School Libraries program. These measures gauge improvement in student achievement and resources in the schools and LEAs served by the program by assessing: (1) The percentage of students in schools served by the Improving Literacy Through School Libraries program who are proficient in reading; (2) The number of books and media resources purchased per student, pre- and post-grant, compared to the national average; and (3) The difference in the number of purchases of school library materials (books and media resources) between schools participating in the Improving Literacy Through School Libraries program and the national average. The Department will collect data for these measures from grantees' final performance reports and other data sources.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E244, Washington, DC 20202–6200. Telephone: (202) 401–3751 or by e-mail: *irene.harwarth@ed.gov.*

If you use a TDD, call the Federal Relay Service (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 contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of 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 31, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–31460 Filed 1–5–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; High School Equivalency Program

CFDA No. 84.141A

AGENCY: Department of Education.

ACTION: Correction; Notice inviting applications for new awards for fiscal year (FY) 2009.

SUMMARY: On December 23, 2008, we published in the **Federal Register** (73 FR 78751) a notice inviting applications for new awards for FY 2009 under the High School Equivalency Program. We are correcting the notice to specify the Deadline for Intergovernmental Review of applications submitted in this competition.

On page 78751, first column, under **DATES:**, after ''Deadline for Transmittal of Applications: February 23, 2009.'' add ''Deadline for Intergovernmental Review: April 24, 2009.''.

On page 78752, first column, under 3. *Submission Dates and Times:,* after ''Deadline for Transmittal of Applications: February 23, 2009.'' add ''Deadline for Intergovernmental Review: April 24, 2009.''.

FOR FURTHER INFORMATION CONTACT: David DeSoto, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202–6135. Telephone: (202) 260–8103.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 31, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–31464 Filed 1–5–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13258–000]

Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 30, 2008.

On July 15, 2008 and supplemented on October 24, 2008, Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the BMA Irrigation System Hydroelectric Project. The proposed project would be located on the Medina River and BMA Canal in Castroville and Medina Counties, Texas.

The proposed BMA Irrigation System Hydroelectric Project would consist of:

Lake Medina Dam

(1) An existing 1,550-foot-long, 164-foot-high concrete dam; (2) an existing Medina Lake upper reservoir having a surface area of 5,575 acres and a storage capacity of 25,400-acre-feet and normal water surface elevation of 1,064 feet mean sea level; (3) a proposed 160-foot-long steel penstock (100 feet existing and 60 feet new); (4) a proposed powerhouse containing one generating unit having an installed capacity of 1.5-megawatts; (5) a proposed tailrace; (6) a proposed 4-mile-long, 138 kV transmission line; and (7) appurtenant facilities. The proposed BMA Irrigation System would have an average annual generation of 5.2-gigawatt-hours.

Diversion Lake Dam

(1) A proposed 450-foot-long, 51-foot-high Diversion Lake Dam; (2) a proposed Diversion Lake lower reservoir having a surface area of 177 acres and a storage capacity of 4,500-acre-feet and normal water surface elevation of 926 feet mean sea level; (3) a proposed 100-foot-long steel penstock; (4) a proposed powerhouse containing one generating unit having an installed capacity of .5 megawatts; (5) a proposed tailrace; (6) a proposed 8.4-mile-long, 138 kV transmission line; and (7) appurtenant facilities. The proposed BMA Irrigation System would have an average annual generation of 2.5-gigawatt-hours.

Applicant Contact: Mr. Ed Berger, Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1, P.O. Box 170, Natalia, TX 78059; phone (830) 665–2132.

FERC Contact: Patricia W. Gillis, 202–502–8735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13258) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31433 Filed 1–5–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13324–000]

Cedar Creek Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 30, 2008.

On November 5, 2008, Cedar Creek, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cedar Creek Pumped Storage Project to be located in Briscoe County, Texas.

The proposed project consists of: (1) Two proposed earthen dams, upper dam 60-foot-high, 12,700-foot-long, lower dam 140-foot-high, 1,600-foot-long; (2) two proposed reservoirs, upper reservoir having a surface area of 283 acres, a storage capacity of 7,660 acre-feet, and normal maximum water surface elevation of 3,340 feet msl, lower reservoir having a surface area of 151 acres, a storage capacity of 8,550 acre-feet, and normal maximum water surface elevation of 2,600 feet msl; (3) a proposed 3,720-foot-long, 28-foot-diameter steel penstock; (4) a proposed powerhouse with six generating units having a total capacity of 662-megawatts; (5) a proposed 26-mile-long, 240-kV transmission line; and (6) appurtenant facilities. The project would have an annual generation of 1,816-gigawatt hours, which would be sold to a local utility.

Applicant Contact: Mr. Brent L. Smith, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, Phone: 208–745–0834.

FERC Contact: Patricia W. Gillis, 202–502–8735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13324) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31434 Filed 1–5–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–1156; FRL–8760–3]

RIN 2040–2A03

Cruise Ship Discharge Assessment Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the availability of the completed Cruise Ship Discharge Assessment Report, which assesses five cruise ship waste streams (i.e., sewage, graywater, oily bilge water, solid waste, and hazardous waste). EPA prepared and invited public comment on the draft Cruise Ship Discharge Assessment Report as part of its response to a petition submitted by the Bluewater Network on behalf of a number of environmental advocacy organizations. Today's action is intended to complete this portion of EPA's response to the petition.

FOR FURTHER INFORMATION CONTACT: Laura S. Johnson, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds (4504T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 566–1273; *fax number:* (202) 566–1546; *e-mail address: johnson.laura-s@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those who are interested in or addressing cruise ship waste streams. Categories and entities interested in today's notice include:

Category	Examples of interested entities
Federal Government	U.S. Coast Guard, National Oceanic and Atmospheric Administration, U.S. Department of Justice.
State/Local/Tribal Government	Governments interested in or addressing cruise ship waste streams.
Industry and General Public	Cruise industry, environmental interest groups.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. Document Electronic Access. To obtain a copy of the report entitled *Cruise Ship Discharge Assessment Report,* please access our Web site at: *http://www.epa.gov/owow/oceans/cruise_ships/disch_assess.html.*

2. **Federal Register** Docket. EPA has established a public docket for this notice under Docket ID No. EPA–HQ–OW–2007–1156. The public docket consists of the documents specifically referenced in this notice and other information related to this notice. The public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center.

3. **Federal Register** Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register** '' listings at: *http://www.epa.gov/fedrgstr/.*

II. Background

Cruise ships operate in every ocean worldwide, often in pristine coastal waters and sensitive marine ecosystems. Cruise ship operators provide amenities to their passengers that are similar to those of luxury resort hotels, including pools, hair salons, restaurants, and dry cleaners. As a result, cruise ships have the potential to generate wastes similar in volume and character to those generated by hotels.

In March 2000, an environmental advocacy group called the Bluewater Network, representing 53 environmental organizations, submitted a petition to the U.S. Environmental Protection Agency (EPA), requesting that EPA identify and take regulatory action on measures to address pollution by cruise ships. Specifically, the petition requested an in-depth assessment of the volumes and characteristics of cruise ship waste streams; analysis of their potential impact on water quality, the marine environment, and human health; examination of existing federal regulations governing cruise ship waste streams; and formulation of recommendations on how to better control and regulate these waste streams. The petition included specific requests related to sewage, graywater, oily bilge water, solid wastes, and hazardous wastes, as well as monitoring, recordkeeping, and reporting. In addition, the petition requested that EPA prepare a report of its investigations and findings. An August 2000 addendum to the petition requested that EPA examine and develop recommendations on how to address air pollution from cruise ships.

EPA's full response to the petition and the addendum from Bluewater Network was signed by EPA's Assistant Administrator for Water on January 31, 2008, and can be accessed at the public docket established for the Cruise Ship Discharge Assessment Report. (See Unit I.B.) As part of this response, EPA prepared a draft Cruise Ship Discharge Assessment Report (draft Assessment Report) assessing five primary cruise ship waste streams, specifically, sewage, graywater, oily bilge water, solid waste, and hazardous waste. For each waste stream, the draft Assessment Report discusses (1) The nature and volume of the waste stream generated; (2) existing federal regulations applicable to the waste stream; (3) environmental management, including treatment, of the waste stream; (4) potential adverse environmental impacts of the waste stream; and (5) actions by the Federal Government to address the waste stream.

On December 20, 2007, EPA published in the **Federal Register** a notice of availability and request for public comment on this draft Assessment Report (72 FR 72353). In addition to requesting comments on the draft Assessment Report, EPA solicited input on options, alternatives, and recommendations on how to address the waste streams assessed in the draft Assessment Report. EPA extended the initial 45-day comment period on the draft Assessment Report by 15 days in response to public requests; the comment period ended on February 19, 2008. EPA received 26 comment letters during the comment period and those letters can be accessed at the docket. (See Unit I.B. for details.)

III. This Action

EPA announces the availability of the completed Cruise Ship Discharge Assessment Report (Assessment Report). Today's action is intended to complete this portion of EPA's response to the petition on cruise ship pollution submitted by the Bluewater Network on behalf of a number of environmental advocacy organizations.

IV. Summary of Comments on the Draft Assessment Report

EPA received 26 comment letters on the draft Assessment Report. Some comments related to information in the draft Assessment Report; some comments provided options, alternatives, and recommendations on how to address the waste streams discussed in the draft Assessment Report. Many of the commenters expressed concern over the potential environmental impacts of cruise ship waste streams. EPA carefully considered all comments when completing the Assessment Report. Based on these comments, EPA made changes to the draft Assessment Report to clarify information and in some cases, added new information.

In particular, some commenters requested a fuller discussion of efforts by state governments to regulate and manage cruise ship waste streams. The completed Assessment Report includes an appendix with relevant information regarding such efforts by state governments to date. Other new information includes an additional section in each chapter identifying a range of options and alternatives (regulatory or non-regulatory) that address the five specified waste streams from cruise ships. Inclusion of any particular option does not imply any EPA recommendation or preference for future action, or that EPA has determined that any of these options are necessary or feasible, or that EPA believes a change to the status quo is warranted, or that EPA or any other entity has the legal authority to implement that option.

In the completed Assessment Report, the options and alternatives listed to address the specified cruise ship waste streams are based on the public comments received, as well as other information gathered. A number of commenters recommended changes to discharge standards and/or geographic restrictions on discharges. Commenters also recommended increased monitoring, reporting, inspections, and enforcement of cruise ship waste stream discharges and management. Some commenters recommended a careful evaluation of cumulative impacts of multiple vessels discharging in one location. Other commenters recommended careful consideration and/or identification of sensitive or at-risk habitats when evaluating the potential impacts of discharges. These recommendations have been incorporated into the options and alternatives sections found at the end of each waste stream chapter of the completed Assessment Report.

While some commenters requested regulatory action to implement their recommendations for addressing cruise ship waste streams, EPA does not commit, through the completed Assessment Report, to the formulation of any Agency recommendations on whether, and if so how, any existing regulations should be revised. Though the completed Assessment Report identifies possible options and alternatives representing a wide range of actions that could be taken to address the five specific waste streams from cruise ships, EPA did not conduct an analysis for each such discharge to determine if changes to the current regulatory scheme are warranted. However, EPA is completing its analysis of Alaska cruise ship sewage and graywater standards in a separate assessment of the adequacy of those legislative standards (which apply under special legislation only to those ships and to those discharges).

As a part of a separate effort, recent legislation (Pub. L. 110–299) directs EPA to conduct a study to evaluate the impacts of discharges incidental to the normal operation of commercial fishing vessels (regardless of size) and other non-recreational vessels less than 79 feet in length. Except for ballast water, the incidental discharges from those vessels are subject to a moratorium on National Pollutant Discharge Elimination System (NPDES) permitting that expires July 31, 2010.

Some commenters questioned the draft Assessment Report's focus on Alaska and requested that similar assessments be conducted in other geographic regions. While much of the information about the treatment and discharge of sewage and graywater presented in the draft and completed Assessment Reports was collected in Alaska, the Assessment Report is not solely focused on conditions or impacts in Alaska. For example, the sections on potential environmental impacts in the sewage and graywater chapters compare these waste streams to national standards and criteria. The information provided in the completed Assessment Report should be helpful to stakeholders interested in evaluating potential impacts on a regional or waterbody basis.

A number of commenters suggested that dilution should not be considered in evaluating potential impacts of sewage and graywater discharges from cruise ships. Other commenters suggested that dilution is a very important part of such assessments, particularly when discharges are from ships underway, and therefore should be discussed earlier and more frequently in the sewage and graywater chapters. The Assessment Report discussed dilution because it is relevant to assessments of potential toxicity, and in some locations dilution is relevant to a determination of whether receiving waters are attaining concentration-based water quality standards. The Assessment Report's discussion of dilution does not express any conclusion and should not be read to imply that dilution addresses all potential environmental impacts from these discharges.

Related to this, one commenter suggested that the evaluation of Type II Marine Sanitation Devices for vessel sewage should always include a discussion of dilution while ships are underway. While a number of cruise lines have voluntarily agreed to discharge from a Type II Marine Sanitation Device only when the vessel is underway and offshore, as a practical matter, such restrictions are not required, either as a matter of circumstance or by law.

Some commenters requested more information on potential treatment technologies for sewage and graywater treatment, such as cost, space, and safety information. More information on these technology options will be made available at EPA's Web site (*http://www.epa.gov/owow/oceans/cruise_ships/*) upon completion of EPA's analysis of cruise ship sewage and graywater discharges in Alaska waters.

One commenter noted that other waste streams and contaminants, such as hull coating leachate, deck runoff, ballast water, viruses, and pharmaceuticals, were not addressed in the draft Assessment Report. The Bluewater Network petition made specific requests related to certain identified cruise ship waste streams for which EPA was to conduct an assessment and produce a report of the investigations and findings. Those same five specified cruise ship waste streams from the petition (sewage, graywater, oily bilge water, solid waste, and hazardous waste) are assessed in the completed Assessment Report. There are a number of other waste streams that may be generated onboard cruise ships, some of which may be considered incidental to the normal operation of a vessel (e.g., ballast water, deck runoff, hull coat leachate). In responding to the petition, EPA did not attempt to assess such other waste streams, and therefore, the completed Assessment Report does not present an assessment of these other waste streams. There are EPA efforts

underway, however, that reach beyond the scope of this Assessment Report. For information regarding EPA efforts relating to the occurrence of pharmaceuticals and personal care products, visit EPA's Web site at *http://www.epa.gov.ppcp*.

In a separate effort, EPA developed a Clean Water Act (CWA) general permit that addresses a range of discharges incidental to the normal operation of commercial vessels, including some of the additional wastes identified by the preceding comment. By virtue of a court decision, which vacated the EPA regulation that had excluded these discharges from NPDES permitting, these discharges will become subject to CWA permitting requirements as of February 6, 2009. Except for ballast water, subsequent legislation (Pub. L. 110–299) exempts commercial vessels shorter than 79 feet and commercial fishing vessels (regardless of their size) from NPDES permitting requirements for these discharges for a period of two years (during which time EPA has been directed to conduct further study and analysis).

One commenter urged EPA and other federal agencies to work at the international level on issues directly associated with discharges from cruise ships and other ocean-going vessels. Numerous federal agencies are presently working cooperatively through forums, such as the International Maritime Organization, to enhance international environmental protection standards. At present, the U.S. government is simultaneously supporting efforts to enhance international standards related to discharges of machinery space wastes, sewage, and garbage. In addition, among other efforts, the U.S. government is also working diligently to enhance and implement international standards relating to air emissions from ships, including measures to reduce greenhouse gas emissions. This work is ongoing and extensive.

Dated: December 30, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8–31453 Filed 1–5–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8759–1]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on January 16, 2009 from 1 p.m. to 3 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number listed below.

Background: GNEB is a Federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. UNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss and approve the Good Neighbor Environmental Board's Twelfth Report: Innovative Approaches to Addressing Environmental Problems along the US/Mexico Border.

Supplementary Information: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individual with disabilities, please contact Mark Joyce at (202) 564–2130 or e-mail him at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: December 19, 2008.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E8–31152 Filed 1–5–09; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8759–2]

Good Neighbor Environmental Board; Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations from a diverse range of qualified candidates to be considered for appointment to fill vacancies on the Good Neighbor Environmental Board. Vacancies are expected to be filled by late spring 2009.

Additional sources may be utilized in the solicitation of nominees.

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. Under Executive Order 12916, implementation authority is delegated to the Administrator of the EPA. The Board is responsible for providing advice to the President and Congress on environmental and infrastructure issues and needs within the states contiguous to Mexico. The statute calls for the Board to have representatives from U.S. government agencies; the states of Arizona, California, New Mexico and Texas; local government; tribes; and a variety of non-governmental officials including the private sector; academic officials; environmental group representatives; health groups; ranching and grazing interests; and other relevant sectors. U.S. government agency representatives are nominated by the heads of their agencies. Non-federal members are appointed by the Administrator of the EPA. The Board meets three times annually, twice at various locations along the U.S.-Mexico border and once in Washington, DC. The average workload for members is approximately 10 to 15 hours per month. Members serve on the Board in a voluntary capacity.

However, EPA provides reimbursement for travel expenses associated with official government business. Nominees will be considered according to the mandates of the Federal Advisory Committee Act, which requires committees to maintain diversity across a broad range of constituencies, sectors, and groups. The following criteria will be used to evaluate nominees:

- Resident of a U.S.-Mexico border state, ideally within the border region itself.
- Extensive professional knowledge of the unique environmental and infrastructure issues that are found in the region, including the bi-national dimension of these issues.
- Representative of a sector or group that helps to shape border-region environmental policy.
- Senior-level experience that fills a current need on the Board for a representative with that particular type of knowledge.

• Demonstrated ability to work in a consensus building process with a wide range of experts from diverse constituencies.

• Ability to volunteer approximately 10 to 15 hours per month to the Board's activities, including participation on meeting planning committees and preparation of text for annual reports and Comment Letters.

Nominations must include a resume describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, e-mail address, and daytime telephone number. Interested candidates may self-nominate.

Submit nominations to: Mark Joyce, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601–M), Washington, DC 20460; telephone (202) 564–2130; fax (202) 564–8129; e-mail *joyce.mark@epa.gov*.

Dated: December 19, 2008.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E8–31153 Filed 1–5–09; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 21, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Louis A. DeNaples and Betty Ann DeNaples, Moscow, Pennsylvania; Louis A. DeNaples, Jr., Dunmore, Pennsylvania; Lisa DeNaples, Mt Pocono, Pennsylvania; Ann DeNaples, Ringoes, New Jersey; Nicholas DeNaples; Margaret DeNaples Glodzik; Dominick DeNaples; Donna DeNaples Dileo; Dominick DeNaples and Mary Ann DeNaples, all of Dunmore, Pennsylvania; Charles DeNaples, Roaring Brook Township, Pennsylvania; Patrick DeNaples; Dominick DeNaples, Jr.; Anthony DeNaples and Joseph DeNaples, all of Dunmore, Pennsylvania, to retain voting shares of First National Community Bancorp, Inc., and thereby indirectly retain control of First National Community Bank, both of Dunmore, Pennsylvania.

Board of Governors of the Federal Reserve System, December 31, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–31401 Filed 1–5–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

General Services Administration Acquisition Regulation; Information Collection; Preparation, Submission, and Negotiation of Subcontracting Plans

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 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 regarding preparation, submission, and negotiation of subcontracting plans. The clearance currently expires on June 30, 2009.

This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, submission, and negotiation of subcontracting plans requires for all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

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; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 6, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, Contract Policy Division, at telephone (202) 501–0044 or via e-mail to *rhonda.cundiff@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 the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires a contractor (except small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.
Responses per Respondent: 1.
Hours Per Response: 12.
Total Burden Hours: 12,240.
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. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: December 2, 2008.

Al Matera, Director, Office of Acquisition Policy.

[FR Doc. E8–31456 Filed 1–5–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Release of the U.S. Department of Health and Human Services' Action Plan To Prevent Healthcare-Associated Infections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Authority: 42 U.S.C 200u.

SUMMARY: The Office of Public Health and Science (OPHS), U.S. Department of Health and Human Services (HHS), announces the release of the HHS *Action Plan To Prevent Healthcare-Associated Infections (HHS Action Plan).* The effort represents a culmination of several months of deliberation by subject matter experts across HHS to identify key actions in the prevention of healthcare-associated infections (HAIs). The document establishes national goals for enhancing and coordinating HHS-supported efforts, including the development of (1) National benchmarks; (2) prioritized recommended clinical practices to facilitate implementation of and adherence to existing recommended practices in hospitals; (3) a coordinated research agenda to strengthen the science for infection control prevention in hospitals; (4) a plan to progress towards the standardized measures and data definitional alignment needed to more accurately measure HAIs and make the varied HHS data systems interoperable; (5) opportunities for evaluating compliance with infection control practices in hospitals through certification processes and potential options for the use of payment policies and financial incentives to motivate organizations to provide better, more efficient care; and (6) a national messaging plan to build partnerships with various stakeholder groups across the country.

Background: Healthcare-associated infections exact a significant toll on human life. They are among the top ten leading causes of death in the United States, accounting for an estimated 1.7 million infections and 99,000 associated deaths. In hospitals, they are a significant cause of morbidity and mortality. In addition to the substantial human suffering exacted by HAIs, the financial burden attributable to these infections is staggering. It is estimated that HAIs incur nearly $20 billion in excess healthcare costs each year. For these reasons, the reduction of HAIs is a top priority for HHS.

The HHS Steering Committee to Prevent Healthcare-Associated Infections (Committee) was established in July 2008. The Committee was charged with developing a strategy to reduce HAIs and issuing a plan which establishes national goals for HAI prevention and outlines key actions for achieving identified short- and long-term objectives. The plan is also intended to enhance collaboration with external stakeholders to maximize coordination and impact of national efforts. Thus, the development process of the *HHS Action Plan* is inclusive. The goal is to effectively collaborate with multiple stakeholders to maximize reach and impact in order to effectively prevent HAIs. The process strives to maximize transparency, public input, and stakeholder dialogue to ensure that the *HHS Action Plan* is relevant to multiple audiences and diverse public health needs and seizes opportunities to achieve its goals. Drawing on the expertise of the HHS Steering Committee To Prevent Healthcare-Associated Infections, other experts across the Federal Government, various stakeholders, and the public, the *HHS Action Plan* will establish a national strategy for the reduction and prevention of HAIs. The public is invited to comment through the Web site on the content of the document. The plan is intended to be updated periodically in response to public input and new recommendations for infection prevention.

ADDRESSES: The *Action Plan To Prevent Healthcare-Associated Infections* and instructions for submitting comments can be viewed at *http://www.hhs.gov/ophs.*

FOR FURTHER INFORMATION CONTACT: Send questions to the Office of Public Health and Science, U.S. Department of Health and Human Services, Ms. Julie Moreno at *Julie.Moreno@hhs.gov* (e-mail), (202) 401–9581 (phone), or (202) 690–6960 (fax) or Ms. Rani Jeeva at *Rani.Jeeva@hhs.gov* (e-mail), (240) 276–9824 (phone), or (240) 276–9860 (fax).

Dated: December 22, 2008.

Donald Wright,

Principal Deputy Assistant Secretary for Health.

[FR Doc. E8–31195 Filed 1–5–09; 10:58 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Project:
Title: Feasibility Test for Design Phase of National Study of Child Care Supply and Demand.
OMB No.: New Collection.
Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget to collect information as part of the Design Phase of the National Study of Child Care Supply and Demand. This effort will gather information that will be useful for evaluating the feasibility and improving the design of a national study of child care supply and demand.

The proposed collection will consist of: A random-digit dial survey of households with children under age 13 for participation in a questionnaire about the demand for child care; a random-digit dial survey of households with individuals providing care to children under age 13 in a residential setting; a telephone screening of after-school programs for eligibility in a survey of child care providers; a telephone survey of providers of care to children under age 13; an in-person survey of providers of care to children under age 13; and, an in-person survey of parents of children under age 13 who are in non-parental care arrangements.

These data collection efforts will be used to examine the functioning of draft

survey instruments. The feasibility test procedures will help inform several decisions about proposed design of the national study including sampling methods, costs and advantages associated with alternative interviewing protocols and reactions to the proposed methods.

Respondents: General population households, home-based and center-based child care providers, and public schools serving children under age 13.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Eligibility calls to Before/After School Programs	150	1	.2	30
Household screening calls	1000	1	15	150
Telephone calls with households with children under age	160	1	5	80
Telephone calls with providers of home-based care	104	1	.3	31.2
Telephone calls with center-based providers of before/after school care	68	1	.5	34
In-person interviews with parents of children in non-parental care	50	1	.4	20
In-person interviews with child-care provider staff	50	1	4	20

Estimated Total Annual Burden Hours: 365.2.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 29, 2008.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. E8–31306 Filed 1–5–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Information Program on Clinical Trials: Maintaining a Registry and Results Databank

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 8, 2008 (Vol. 73, No. 196, p. 58973) and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Information Program on Clinical Trials: Maintaining a Registry and Results Databank; *Type of Information Collection Request:* Revision of currently approved collection [OMB No. 0925–0586, expiration date 01/31/2009], *Form Number:* N/A; *Need and Use of Information Collection:* The National Institutes of Health is modifying the clinical trial registry databank established under previous law [FDAMA, Section 113] to comply with provisions of Title VIII of Public Law 110–85 (Food and Drug Administration Amendments Act of 2007). The databank collects specified registration and results information on certain clinical trials identified in the law, with the objective of enhancing patient enrollment and providing a mechanism for tracking subsequent progress of clinical trials, to the benefit of public health. The databank is widely used by patients, physicians, and medical researchers; in particular, those involved in clinical research studies. Public Law 110–85 expands the scope of clinical trials that must be registered in *ClinicalTrials.gov*, increases the clinical trial information that must be submitted as part of each registration, and requires the submission of basic results information for registered trials of approved drugs, biologics and devices. *Frequency of Response:* Responsible parties must submit the required registration information not later than 21 days after enrolling the first subject. Results information is to be reported not later than 12 months after the completion date (as defined in the law), but the responsible party may request an extension of the deadline or delay submission by certifying that the drug or device under study has not yet been approved. Updates to submitted information are required at least once a year, unless there are no changes to report. Changes in recruitment status and completion of a trial must be reported not later than 30 days after such events. *Description of Respondents:* Respondents are referred to in the law as ''responsible parties,'' and are defined as: (1) The sponsor of the clinical trial (as defined in 21 CFR 50.3) or (2) the principal investigator of such clinical trial if so designated by a sponsor, grantee, contractor, or awardee, provided that ''the principal investigator is responsible for conducting the trial, has access to and control over the data from the clinical trial, has the right to publish the results of the trial, and has the ability to meet all of the requirements'' for submitting information under the law. *Estimate of Burden:* The burden associated with this information collection consists of two parts: the burden associated with registration of clinical trials; and the burden associated with the reporting of results information. In both cases, the burden includes the time necessary to extract information from the study protocol or results record, reformat and review it, enter it into the databank, and provide necessary updating over the course of the study. It is estimated that

registration information will be required for 3,000 trials of drugs and biologics and 445 trials of medical devices each year.

Each initial registration is estimated to take 7 hours and each of the subsequent 8 updates to the record are estimated to take 2 hours, resulting in an annual burden of 79,235 hours. It is estimated that there will be voluntary submissions of registration information for 6,000 trials of drugs and biologics, 545 trials of devices, and 5,280 trials of other types of medical interventions. Using the same hour estimates as for mandatory registration, the burden associated with voluntary registrations is estimated at 271,975 hours, bringing the total registration burden to 351,210 hours. In the first year of operation, it is estimated that there will be an additional burden of 84,150 hours associated with the updating of information for 7,000 trials of drugs and biologics and 650 trials of medical devices that were previously registered in the databank and ongoing as of December 26, 2007 (90 days after enactment). It is estimated that such trials will require one update of 3 hours to bring them into compliance with the new law (FDAAA) and 4 subsequent updates of 2 hours each. Submisson of results information is required only for those applicable clinical trials of drugs, biologics, and devices that are subject to the mandatory registration requirements of FDAAA and for which the product(s) under study have been approved or cleared by the FDA. It is estimated that results reporting will be required for 1,645 trials of drugs and biologics and 375 trials of medical devices each year. Initial submission of results information is estimated to require 10 hours, and each result submission is expected to require two updates that take 5 hours each. It is estimated that 2,345 trials per year will submit certifications for delayed reporting of results information or a request for an extension of the reporting deadline. Preparation and submission of such information is estimated to take 1 hour. The total burden for results reporting is therefore estimated at 42,745 hours per year. There are no capital costs to report. The operating and maintenance budget for the Clinical Trials Registry Databank in FY2009 is projected to be approximately $3 million.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or e-mail your request to *sharlipd@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 17, 2008.

Betsy L. Humphreys,

Deputy Director, National Library of Medicine, National Institutes of Health.

[FR Doc. E8–31448 Filed 1–5–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine, Special Emphasis Panel, G08/K99/R01/R13 SEP.

Date: February 11, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel; G13 SEP.

Date: February 20, 2009.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968, (301) 594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 22, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–31379 Filed 1–5–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0961]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0073

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of

Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0073, Alteration of Unreasonable Obstructive Bridges. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before February 5, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0961] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0961]. For your comments to OIRA to be considered, it is best if they are received on or before the February 5, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0961], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 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. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–0961] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 54842, September 23, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

Title: Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 1625–0073.

Type Of Request: Extension of a currently approved collection.

Affected Public: Public and private owners of bridges over navigable waters of the United States.

Abstract: Sections 494, 502, 511, 513, 514, 516, 517, 521, 522, and 523 of 33 U.S.C. authorize the Coast Guard to alter bridges and causeways that go over navigable waters of the United States and are deemed to be unreasonably obstructive. Coast Guard regulations on the alteration of unreasonably obstructive bridges are located in 33 CFR part 116.

Forms: None.

Burden Estimate: The estimated burden has increased from 200 hours to 240 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 29, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–31416 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1176]

Information Collection Requests to Office of Management and Budget; OMB Control Numbers: 1625–0022, 1625–0093, 1625–0094, and 1625–0095

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625–0022, Application for Tonnage Measurement of Vessels; (2) 1625–0093, Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual; (3) 1625–0094, Ships Carrying Bulk Hazardous Liquids; and (4) 1625–0095, Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 9, 2009.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–1176], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether these ICRs should be granted based on the collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–1176], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 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 will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–1176] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Application for Tonnage Measurement of Vessels.

OMB Control Number: 1625–0022.

Summary: The information from this collection helps the Coast Guard determine a vessel's tonnage which in turn assists in determination of licensing, inspection, safety requirements, and operating fees.

Need: Under 46 U.S.C. 14104 certain vessels must be measured for tonnage. Coast Guard regulations for this measurement are contained in 46 CFR part 69.

Forms: CG–5397.

Respondents: Owners of vessels.

Frequency: One-time.

Burden Estimate: The estimated burden has decreased from 38,000 hours to 33,499 hours a year.

2. Title: Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual.

OMB Control Number: 1625–0093.

Summary: A Letter of Intent is a notice to the Coast Guard Captain of the Port indicating the determination to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An Operations Manual (OM) is also required for this type of facility. The OM establishes procedures for conducting transfers and in the event of a spill.

Need: Under 33 U.S.C. 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations for

prevention of the discharge of oil and hazardous substances from facilities and for containment of such discharges. The Letter of Intent regulation is contained in 33 CFR 154.110; the OM regulations are contained in 33 CFR part 154 subpart B.

Forms: N/A.

Respondents: Operators of facilities that transfer oil or hazardous materials in bulk.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 47,200 hours to 53,960 hours a year.

3. Title: Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 1625–0094.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: Under 46 U.S.C. 3703, the Coast Guard is authorized to prescribe regulations for protection against hazards to life, property, navigation/vessel safety, and protection of the marine environment. The regulations for the safe transport by vessel of certain bulk dangerous cargoes are contained in 46 CFR part 153.

Forms: CG–4602B, CG–5148, CG–5148A, CG–5148B and CG–5461.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 1,959 hours to 3,410 hours a year.

4. Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 1625–0095.

Summary: This information is needed to minimize the number and impact of pollution discharges, and accidents occurring during transfer of oil or hazardous materials. This information will also be used to evaluate proposed alternatives and requests for exemptions.

Need: Under 33 U.S.C. 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil and hazardous substances from vessels and facilities and to ensure containment thereof. Coast Guard regulations in 46 CFR part 154 are intended to: (1) Prevent or mitigate results of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels that use vapor control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to or from vessels with a 250 or more barrel capacity; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution prevention regulations.

Forms: N/A.

Respondents: Owners and operators of bulk oil and hazardous materials facilities and vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 1,440 hours a year.

Dated: December 29, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–31417 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–1177]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0097 and 1625–0099

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) and Analyses to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625–0097, Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F; and (2) 1625–0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 9, 2009.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–1177], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

Copies of the proposed ICRs are available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether these ICRs should be granted based on the collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you

provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–1177], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 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. In response to your comments, we may revise an ICR or decide not to seek an extension of approval for a collection.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this Notice [USCG–2008–1177] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 1625–0097.

Summary: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard for review and approval, plans pertaining to marine engineering systems to ensure the vessel will meet regulatory standards.

Need: Under 46 U.S.C. 3306, the Coast Guard is authorized to prescribe vessel safety regulations including those related to marine engineering systems. Title 46 CFR Subchapter F prescribes those requirements. The rules provide the specifications, standards and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life is dependent.

Forms: N/A.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 3,567 hours to 3,312 hours a year.

2. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 1625–0099.

Summary: The collection of information requires passenger vessels post two placards which contain safety and operating instructions on the use of cooking appliances using liquefied or compressed natural gas.

Need: Title 46 U.S.C. 3306(a)(5) authorizes the Coast Guard to prescribe regulations for the use of vessel stores of a dangerous nature. These regulations are prescribed in both un-inspected and inspected passenger vessel regulations.

Forms: N/A.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 2,547 hours to 5,288 hours a year.

Dated: December 29, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–31418 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0929; Control Number: 1625–0040]

Information Collection Request to Office of Management and Budget; OMB

AGENCY: Coast Guard, DHS.

ACTION: Reopening comment period.

SUMMARY: On September 23, 2008, the U.S. Coast Guard published a notice in the **Federal Register** requesting comments on our intent to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting a revision of its approval for the following collection of information: 1625–0040, Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical. That notice stated the complete ICR would be available through both the online docket and at the Coast Guard facility in Washington, DC. Because the complete ICR was not made available online during the stated comment period, we are reopening it until February 5, 2008.

DATES: Comments must reach the Coast Guard on or before February 5, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–0929], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0929], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 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 will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–0929] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316)

Previous Request for Comments

On September 23, 2008, the Coast Guard published a notice in the **Federal Register** (73 FR 54853) requesting comments on our intent to submit an ICR to the Office of Management and Budget (OMB) requesting a revision of its approval for the following collection of information: 1625–0040, Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical. It stated the ICR would be made available both in the online docket and at a Coast Guard facility in Washington, DC. However, the ICR was not made available online during the stated comment period, so the comment period is reopened until February 5, 2008.

Information Collection Request

Title: Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical.

OMB Control Number: 1625–0040.

Summary: Title 46 U.S.C. 7302(b) authorizes the Coast Guard to issue a Continuous Discharge Book (CG Form 719A) upon request from an individual. Title 46, Code of Federal Regulations (CFR), paragraphs 10.205(a), 10.207(a), 10.209(a)(1), 12.02–9(a), and 12.02–27(a)(1) mandate that each applicant for a license, certificate of registry, or merchant mariner document shall make written application on a Coast Guard furnished form Application for License as Officer, Staff Officer, Operator, and Merchant Mariner's Document (CG Form 719B); sections 10.205(d), 12.05–5, and 12.15–5 require each applicant requesting a license or merchant mariner document must present a completed Coast Guard physical examination report, Merchant Mariner Physical Examination Report (CG Form 719K) executed by the physician. Sections 10.207(e)(2) and 10.209(d)(2) of 46 CFR state the report may be required. Further, paragraph 10.211(a) mandates criteria Small Vessel Sea Service Form (CG Form 719S) for documenting sea service on vessels of less than 200 gross registered tons. Paragraphs 10.202(i) and 12.02–9(f) mandates that each applicant shall produce evidence, DOT/USCG Periodic Drug Testing Form (CG Form 719P) of having passed a chemical test for dangerous drugs. Paragraph 12.02–17(e) requires entry-level merchant mariner document applicants to provide a statement from a qualified practitioner attesting to the applicant's medical fitness to perform the functions for which the document is issued Entry Level Physical (CG Form 719K/E).

Need: The Coast Guard will use the information collected solely for the purposes of determining issuance eligibility of a merchant mariner credential(s), *i.e.*, license, certificate of registry, or merchant mariner document.

Forms: CG Form 719A, Continuous Discharge Book; CG Form 719B, Application for License as Officer, Staff Officer, Operator, and Merchant Mariner's Document; CG Form 719K, Merchant Mariner Physical Examination Report; CG Form 719K/E, Entry Level Physical; CG Form 719S, Small Vessel Sea Service Form; and CG Form 719P, DOT/USCG Periodic Drug Testing Form.

Respondents: Individuals and households.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 329,356 hours to 10,833 hours a year.

Dated: December 29, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–31419 Filed 1–5–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

No Child Left Behind Act of 2001

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of time for submitting nominations for tribal representatives for the No Child Left Behind Negotiated Rulemaking Committee membership.

SUMMARY: The Secretary of the Interior is extending the deadline from December 8, 2008, to January 23, 2009, for tribes to nominate individuals for membership on the No Child Left Behind Negotiated Rulemaking Committee. This committee will work with the Department of the Interior to develop recommendations for proposed regulations regarding the BIE-funded school facilities as required by the No Child Left Behind Act of 2001.

DATES: Nominations from tribes for membership in the negotiated rulemaking committee and comments on the establishment of this committee, including additional interests other than those identified in this notice, must be postmarked or faxed no later than January 23, 2009.

ADDRESSES: Send nominations and comments to the Designated Federal Official, at the following address: Michele F. Singer, Director, Office of Regulatory Management, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Or fax to (505) 563–3811.

FOR FURTHER INFORMATION CONTACT: Michele F. Singer, Designated Federal Official. *Telephone:* (505) 563–3805. *Fax:* (505) 563–3811.

SUPPLEMENTARY INFORMATION: On October 22, 2008, we published a notice requesting nominations for a negotiated rulemaking committee. Pursuant to the mandate of the No Child Left Behind Act, the committee will prepare and submit to the Secretary of the Interior a report or reports setting out:

- A method for creating a catalog of school facilities;
- The school replacement and new construction needs of the interested parties, and a formula for the equitable distribution of funds to address those needs;
- The major and minor renovation needs of the interested parties, and the formula for the equitable distribution of funds to address such needs; and
- Facilities standards for home-living (dormitory) situations.

The **Federal Register** notice appeared at 73 FR 63008. In that notice we invited nominations for committee membership from tribes whose students attend BIE-funded schools, whether the school is operated by the bureau or by the tribe through a contract or grant. To the maximum extent possible, the proportional representation of tribes on the committee will reflect the proportionate share of students from tribes served by the BIE-funded school system. In addition, the Secretary will consider the balance of representation with regard to geographical location, size, and type of school and facility, as well as the interests of parents, teachers, administrators, and school board members, in selecting tribal committee representatives.

Because committee membership should reflect the diversity of tribal interests, representatives of tribal and tribally operated schools should nominate representatives and alternates who will:

- Have knowledge of school facilities and their repair, renovation, and construction (this may include knowledge and skills of construction project management, school facilities operation and management, construction cost estimation, education program space needs, budgeting and appropriation, engineering);
- Have relevant experience as past or present superintendents, principals, facility managers, teachers, or school board members or possess direct experience with school construction projects;
- Be able to coordinate, to the extent possible, with other tribes and schools who may not be represented on the committee;
- Be able to represent the tribe(s) with the authority to embody tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s);
- Be able to negotiate effectively on behalf of the tribe(s) represented;
- Be able to commit the time and effort required to attend and prepare for meetings; and
- Be able to collaborate among diverse parties in a consensus-seeking process.

In addition, in order for tribes and schools with too few students to be represented under the proportional membership computation, the Secretary invites nominations from the following parties who would be affected by the final products of the committee, which may include report(s) and/or proposed regulations:

- Tribes served by BIE-funded schools not represented by the tribes allocated seats according to share of student enrollment (please refer to the Final Convening Report prepared by CBI, p. 38 at *http://ecr.gov/pdf/BIA_FinalConvRpt200803.pdf.*);
- Tribes who will help to increase the geographic diversity of representation on the committee;
- Representatives who will help to increase the diversity of types of schools represented (*e.g.*, off-reservation boarding schools, dorms, and schools serving multiple tribes);
- Representatives who might be nominated by multiple tribes or regional tribal associations and have ability to coordinate and represent a coalition or group of like-minded tribes and schools; and
- Representatives of regional or national Indian education organizations. Nominees of these interests, like the proportionate-share nominees, must meet the criteria of this section.

There will be a facilitation team available to assist tribes or groups of tribes in selecting nominees who can meet the nomination criteria and represent the interests of multiple tribes and schools. For such assistance, Tribes may contact Sarah Palmer, Senior Program, Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, AZ 85701, *Direct Telephone:* (520) 901–8556, *e-mail: palmer@ecr.gov.* Web site: *http://www.ecr.gov.*

We will consider nominations for tribal committee representatives only if they are nominated through the process identified in this notice and in the **Federal Register** notice at 72 FR 63008. We will not consider any nominations that we receive in any other manner. We will also not consider nominations for Federal representatives. Only the Secretary may nominate Federal employees to the committee.

Nominations must include the following information about each tribal nominee for membership on the No Child Left Behind negotiated rulemaking committee:

(1) The nominee's name, tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business e-mail address, if applicable);

(2) The tribal interest(s) to be represented by the nominee (see section V of the notice appeared at 73 FR63008) and whether the nominee will represent other interest(s) related to this rulemaking, as the tribe may designate;

(3) A resumé reflecting the nominee's qualifications and experience in Indian education (including being a parent of a student attending a BIE-funded school) and experience in any phase of school facility construction (including master planning, project planning, design, construction, and facility management), indicating that the nominee can adequately represent the interest(s) identified in (2) above; and

(4) A brief description of how they will represent tribal views, communicate with tribal constituents, and have a clear means to reach agreement on behalf of the tribe(s) they are representing. Additionally, a statement as to whether the nominee is only representing one tribe's views or whether the expectation is that the nominee represents a group of tribes.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section. Nominations and comments received will be available for inspection at the address listed above from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Dated: December 24, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E8–31411 Filed 1–5–09; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–MA]

Notice of Temporary Closure of Public Lands to Motorized Vehicle Travel

AGENCY: Bureau of Land Management; Royal Gorge Field Office.

ACTION: Notice of Temporary Closure of Public Lands to Motorized Vehicle Travel on Public Lands.

SUMMARY: Notice is hereby given that effective immediately, certain public lands in Fremont County, Colorado, are temporarily closed to all types of motorized travel. The purpose of this closure is to prevent the development of unauthorized user-created trails and damage to soils and vegetation, and to protect sensitive paleontological resources. Approximately 1,600 acres of public lands are affected by this closure. These lands will remain closed while travel management planning is completed in 2009. This closure is made under the authority of 43 CFR 8364.1.

DATES: Effective immediately from the date of publication in the **Federal Register** and remaining in effect unless revised, revoked or amended.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3028 East Main Street, Cañon City, Colorado 81212; telephone 719–269–8500.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager, or Leah Quesenberry, Outdoor Recreation Planner, at the above address and phone number.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure are identified as follows:

Fremont County, Colorado, Sixth Principal Meridian

Located in the Garden Park area, approximately 6 miles north of Canon City, Colorado.

T. 17 S., R. 70 W., Section 19: SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼
Section 20: SW¼NE¼, SE¼NW¼, and S½
Section 23: SE¼SW¼, and SW¼SE¼
Section 26: NE¼, SE¼NW¼, and NE¼SE¼
Section 29: N½, SE¼SW¼, and W½SE¼
Section 30: NE¼

This closure order does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or other emergency purposes, or to any other vehicle use that is expressly authorized or otherwise officially approved by the BLM. Violation of this order is punishable by a fine not to exceed $1,000, and/or imprisonment not to exceed 12 months as defined under 43 CFR 8360.0–7. Enhanced penalties may also be imposed under the authority of Title 18 U.S.C. § 3571. Notice of this closure order and a detailed map will be posted at the Royal Gorge Field Office.

Roy L. Masinton,

Field Manager.

[FR Doc. E8–31427 Filed 1–5–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 2, 2009.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Park Headquarters, Bar Harbor, Maine, at 1 p.m., to consider the following agenda:

1. Review and approval of minutes from the meeting held September 15, 2008.
2. Committee reports:

—Land Conservation
—Park Use
—Science and Education
—Historic

3. Old business.
4. Superintendents report.
5. Public comments.
6. Proposed agenda for next Commission meeting, June 2009.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: December 12, 2008.

Len Bobinchock,

Acting Superintendent.

[FR Doc. E8–31156 Filed 1–5–09; 8:45 am]

BILLING CODE 4310–2N–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Public Open Houses for Calendar Year 2009

Notice is hereby given that public Open Houses of the Golden Gate National Recreation Area (GGNRA) will be scheduled in calendar year 2009 to distribute information and provide public involvement on issues related to management of the GGNRA. These Open Houses are scheduled for the following dates in San Francisco and at locations yet to be determined in San Mateo County and Mann County, California:

Tuesday, February 17, 4 p.m.—Marin County, CA location (TBA).

Tuesday, May 19, 4 p.m.—Park Headquarters, Fort Mason, San Francisco, CA.

Tuesday, September 15, 4 p.m.—Pacifica, CA location (TBA).

Tuesday, November 17, 4 p.m.—Park Headquarters, Fort Mason, San Francisco, CA.

All Open Houses will start at 4 p.m. Information confirming the time and location of all public meetings or cancellations of any meetings can be received by calling the Office of Public Affairs at (415) 561–4733. Public Open House agendas and all documents for public scoping and public comment on issues listed below can be found on the park Web site at *http://www.nps.gov/goga.*

Anticipated possible agenda items at meetings during calendar year 2009 include:

- Marin Headlands—Fort Baker Transportation Management Plan.
- General Management Plan—Golden Gate National Recreation Area.
- Extension of San Francisco Municipal Railway's Historic ''F'' Streetcar Line.
- Dog Management Plan for GGNRA.
- Dias Ridge Trail Rehabilitation and Trail Improvement Project.
- Southern Marin Equestrian Plan Update.
- Doyle Drive—South Access to the Golden Gate Bridge.
- The San Francisco Bay Trail at Fort Mason.
- The Upper Fort Mason entry at Bay & Franklin Streets.

• Long Range Transportation Plan.
• Headlands Institute Improvements and Expansion Plan.
• USCG Lighthouses Transfer Update.
• Trails Forever—Update on Projects.
• Headlands Institute Campus Improvement and Expansion Plan.
• Activities and membership information of the Golden Gate National Parks Conservancy.
• Update on Park Partner Projects in the Marin Headlands.
• Update on Restroom Construction at Fort Funston.
• Ocean Beach: Erosion Control and Vision Planning.
• Update on Institute at Golden Gate.
• Accessibility projects and goals at GGNRA.
• Update on GGNRA's San Mateo Lands.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of Public Affairs, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4733. They are also noticed on the Golden Gate National Recreation Area Web site *http://www.nps.gov/goga* under the section ''Public Meetings''.

All Open Houses are open to the public. Sign language interpreters are available by request at least one week prior to a meeting. The TDD phone number for these requests is (415) 556 2766. For copies of the agendas contact the Office of Public Affairs, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, or call (415) 561–4733.

Dated: December 8, 2008.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. E8–31157 Filed 1–5–09; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Wonderyears, Inc.; Denial of Application

On December 17, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Wonderyears, Inc. (Respondent), of Deerfield Beach, Florida. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a retail pharmacy on the ground that its registration ''would be inconsistent with the public interest.'' Show Cause Order at 1.

The Show Cause Order specifically alleged that on January 10, 2007, Daniel L. Dailey, Respondent's President and Chief Executive Officer, had applied for a DEA pharmacy registration to dispense controlled substances in schedules II through V. *Id.* The Show Cause Order alleged, *inter alia*, that Dailey had previously been the President and CEO of Powermedica, an entity which had held a DEA registration as a retail pharmacy, and that on several occasions, Special Agents of the Food and Drug Administration had obtained from Powermedica, anabolic steroids, which are schedule III controlled substances, without having any contact with a physician, in violation of federal and state laws. *Id.* at 2 (citing 21 U.S.C. 841; 21 CFR 1306.04, Fla. Stat. Ann. § 465.015(2)(c)).

On December 26, 2007, the Show Cause Order, which also notified Respondent of its rights under 21 CFR 1301.43, was served on it by certified mail to the address of its proposed registered location. Since that date, neither Respondent, nor anyone purporting to represent it, has requested a hearing. Because more than thirty days have elapsed since Respondent was served with the Show Cause Order, and Respondent has not requested a hearing, I conclude that Respondent has waived its right to a hearing. 21 CFR 1301.43(d). I therefore enter this Decision and Final Order based on relevant material contained in the investigative file and make the following findings.

Findings

Respondent is a Florida Corporation whose President is Daniel L. Dailey. On January 10, 2007, Respondent submitted an application for a DEA Certificate of Registration as a retail pharmacy and sought authority to handle controlled substances in schedules II through V, at the proposed location of 270 SW 12th Ave., Deerfield Beach, Florida. Respondent's application was prepared by Daniel L. Dailey.

On March 16, 2007, DEA Diversion Investigators (DIs) went to Respondent's principal place of business (which was an address different than that listed on its application) to conduct a pre-registration investigation and met with Dailey. Dailey, who was the only corporate officer of the entity, provided the DIs with a copy of Respondent's Articles of Incorporation and told the DIs that it would compound veterinary medications for swines and equines. Respondent, however, held only a community pharmacy license from the State of Florida and Dailey told the investigator that he had not even applied to the State for a compounding pharmacy license. Dailey further maintained that he would not compound steroids, but rather, only non-controlled medications such as creams and gels.

A week later, Dailey telephoned one of the DIs and told her that he now needed a DEA registration because he was seeking a contract with two AIDS clinics. He also stated that he planned to sell controlled substances to physicians.

Dailey further told the DI that he had first become involved in the pharmaceutical business in November 2000, when he invested Powermedica, Inc. According to the records of the State of Florida, as well as a letter he submitted to the DI, Dailey ''was the President and CEO of a company Powermedica, Inc.[,] which was the subject of [an] FDA investigation in 2005.'' In the letter, Dailey further stated that Powermedica had ''not been charged or fined by the Federal Authorities.''

According to the investigative file, on June 20, 2005, the Florida Department of Health ordered the emergency suspension of the pharmacy permit held by Powermedica, Inc. *See* Order of Emergency Suspension of Permit, *In re: The Emergency Suspension of the Permit of PowerMedica, Inc.,* 1 (Fla. Dep't Health, 2005). The order found that ''at all times material to [the] cases, Daniel L. Dailey was chief executive of Powermedica.'' *Id.* at 2. The order further found that on August 13, 2004, an FDA Special Agent (S/A) had visited Powermedica's Website and made an undercover purchase of stanozol (4 mg.), an anabolic steroid and schedule III controlled substance, by ''complet[ing] a brief medical questionnaire,'' and entering some personal information including a ''mailing address and credit card authorization.'' *Id.* at 3. On August 18, 2004, the FDA S/A received the stanozol. *Id.* at 4. The accompanying prescription listed the prescribing physician as Dr. Abi Almarashi. *Id.* Almarashi, whose office was located in Flushing, New York, had ''never performed a physical examination of'' the S/A and had never discussed with her ''treatment options and the risks and benefits of treatment.'' *Id.*[1]

The same day, another FDA S/A visited the Powermedica Web site and made an undercover purchase of

[1] According to the investigative file, Powermedica's Web site advertised that the company offered for sale various anabolic steroids.

another anabolic steroid and schedule III controlled substance, nandrolone decanoate (100 mg.), by ''complet[ing] a brief medical questionnaire'' and entering his mailing address and credit card information. *Id.* at 4. On August 25, 2004, the S/A received the nandrolone and a prescription sheet which authorized three refills. *Id.* The S/A ''did not have a physical examination nor did he speak to a doctor regarding this prescription at any time before receipt of the medication.'' *Id.*

Subsequently, one of the FDA S/As, who had since visited Powermedica's office and purchased human growth hormone (HGH), introduced a Detective from the Broward County, Florida Sheriff's Office to Tony Jones, who represented that he was a ''clinical consultant'' for Powermedica.[2] *Id.* at 9. The Detective, who was attempting to make an undercover purchase of Powermedica's Testosterone Replacement Therapy, which included both testosterone cypionate, an anabolic steroid and schedule III controlled substance, and human chorionic gonadotropin, a non-controlled drug, subsequently met with Jones, completed a questionnaire, and paid him $175 for a lab test and ''doctor's fee.'' *Id.* Approximately two weeks after he underwent a blood test, the Detective went to Powermedica's office and picked up his order which contained 200 mg./ml. of testosterone cypionate, needles and syringes.[3] *Id.* at 11. The Detective paid $312.10 for his order. *Id.* Powermedica distributed the drugs to the Detective notwithstanding that the Detective had not been physically examined by a physician and no physician had discussed with him the risks and benefits of using testosterone cypionate. *Id.*

Following the service of the suspension order, Powermedica did not contest the State's findings. Nor did it contest the allegations of the administrative complaints which the State subsequently filed. Instead, it voluntarily relinquished its pharmacy permits. *See* Final Order of Voluntary Relinquishment, *Department of Health* v. *Powermedica, Inc.* (Sept. 15, 2005). On September 18, 2005, Powermedica also surrendered its DEA registration.[4]

Discussion

Section 303(f) of the Controlled Substances Act provides that ''[t]he Attorney General may deny an application for [a pharmacy] registration if he determines that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005).

While Respondent is a corporate entity and technically has an independent legal existence from its officers, DEA has long held that misconduct committed by a corporation's officers and owners (in the case of a closely held corporation) is properly considered in determining whether to revoke an existing registration, or deny an application for a new registration, of a corporate entity. *See MB Wholesale, Inc.,* 72 FR 71956, 71958 (2007); *Lawson & Sons Pharmacy,* 48 FR 16140, 16141 (1983). In light of Mr. Dailey's ownership of, and role as CEO of Powermedica, and his ownership of, and role as CEO of Respondent, I hold that Powermedica's experience in dispensing controlled substances and record of compliance with Federal and State laws related to controlled substances is properly considered in determining whether granting Respondent's application would be inconsistent with the public interest.

As found above, Powermedica unlawfully distributed anabolic steroids including stanozol, nandrolone decanoate, and testosterone cypionate, which are schedule III controlled substances, on multiple occasions. The distributions were unlawful because they were based on prescriptions issued by a physician who did not establish a legitimate doctor patient relationship with the undercover officers and Dailey/Powermedica had reason to know that the prescriptions were illegal. Indeed, the evidence shows that the undercover officers had no contact at all with Dr. Almarashi and that the officers' information was routed by Dailey/Powermedica to Almarashi in order to obtain the prescriptions necessary to dispense the steroids.

As the State noted in the emergency suspension order, Fla. Sta. § 465.023(1)(e) ''prohibits a pharmacy permittee from dispensing any medicinal drug based upon [a] prescription when the pharmacist knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship that included a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed.'' Order of Emergency Suspension at 16 (para. 58). These distributions likewise violated the CSA. *See* 21 CFR 1306.04(a) (''A prescription for a controlled substance * * * must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.'').

Moreover, Dr. Almarashi was licensed in New York and maintained his office in Flushing, New York. Yet he was prescribing to persons in Florida, where he was not licensed. As previously noted, a prescription issued by a practitioner who is engaged in the unauthorized practice of medicine is not a prescription which has been issued in

[2] The investigation also revealed that Powermedica distributed HGH to the FDA S/A and a Detective from the Miami-Dade Police Department based on prescriptions issued by Dr. Almarashi. Almarashi did not physically examine either the S/A or the Detective, and had not discussed the risks and benefits of using HGH with either officer. *Id.* at 6. Moreover, the FDA agents subsequently seized HGH which had been shipped to Powermedica from a non-FDA approved manufacturer in China; these imports violated the Food, Drug and Cosmetic Act, and the Florida statutes. *Id.* at 10–11. While HGH is not a controlled substance, Powermedica's violations of federal and state laws in distributing and importing this drug are relevant in assessing whether it would comply with the Controlled Substances Act.

[3] The Detective was also given a bag of Somatropin 6 mg. along with needles and syringes. *Id.* at 11.

[4] During the investigation of his new firm's application, Dailey asserted that a Special Agent had lied to a magistrate about obtaining controlled substances without prescriptions. Dailey's assertion begs the question of why he surrendered Powermedica's state license without contesting the allegations against it which were contained in the various complaints brought by the State.

the usual course of professional practice. *See* 21 U.S.C. 802(21) (''The term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance.''); *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (''In the case of a physician, the [CSA] contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice.''); *see also United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007) (''[A] physician who engages in the unauthorized practice of medicine under state laws is not a 'practitioner acting in the usual course of * * * professional practice' under the CSA.'').

I therefore conclude that Mr. Dailey's/Powermedica's experience in dispensing controlled substances (factor two) and his/its record of non-compliance with applicable Federal and State laws (factor four) amply demonstrate that granting Respondent's application for a new registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f).[5] Accordingly, Respondent's application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Wonderyears, Inc., for a DEA Certificate of Registration as a retail pharmacy be, and it hereby is, denied. This Order is effective February 5, 2009.

Dated: December 19, 2008.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–8]

Jayam Krishna-Iyer, M.D.; Suspension of Registration; Granting of Renewal Application Subject to Condition

On September 1, 2006, I, the Deputy Administrator of the Drug Enforcement Administration, ordered that the DEA Certificate of Registration issued to Jayam Krishna-Iyer, M.D. (Respondent), of Clearwater, Florida, be revoked. *Jayam Krishna-Iyer, M.D.*, 71 FR 52148, 52159 (2006). The Order also denied Respondent's pending application for renewal of her registration.

As grounds for the Order, I noted that Respondent had issued prescriptions for controlled substances to three separate undercover operatives notwithstanding that each of the operatives had indicated that he was not in pain, and had told Respondent that he was obtaining controlled substances from non-legitimate sources such as friends. *Id.* at 52158. I further noted that Respondent had failed to conduct a physical exam on each of the undercover operatives and had falsified each operative's medical record to indicate that she had done an exam. *Id.* I also noted that Respondent had made statements during each operative's visit indicating that she knew that the operative was seeking the drugs to abuse them and not to treat pain. *Id.* Finally, I noted that Respondent had pre-signed prescriptions and given them to a registered nurse in her employ, and that she allowed the nurse to issue prescriptions to one of the operatives even though she did not attend to the operative during the visit and the nurse lacked authority under both Federal law and Florida law to prescribe controlled substances. *Id.*

In the decision, I noted that Respondent had undertaken substantial measures to reform her practice including hiring a private investigation firm to review patient records to determine which patients were likely substance abusers and should be discharged from her practice; the firm also developed procedures for recognizing drug abusers, doctor shoppers, prescription fraud, patients with a drug-related criminal history, and dealing with claims of lost and stolen medications. *Id.* at 52156. I also noted that the firm had conducted extensive criminal history checks on Respondent's patients and that she had discharged a large of number of patients. *Id.*

While I recognized the substantial measures that Respondent had undertaken to reform her practice, I adopted the ALJ's finding that Respondent failed to accept responsibility for her misconduct based on her testimony that she did not intentionally or knowingly distribute a controlled substance to the undercover operatives because she knew the drugs would not be sold on the street. *Id.* at 52159. As I explained in the Order, ''[i]t is no less a violation that the 'patient' will personally use the drug rather than sell it on the street.'' *Id.* I further concluded that because Respondent had ''refuse[d] to acknowledge her responsibilities under the law,'' the reforms she had undertaken would ''still not adequately protect public health and safety,'' and that this finding was dispositive as to whether her continued registration would be consistent with the public interest. *Id.*

Thereafter, Respondent filed a petition for review in the U.S. Court of Appeals for the Eleventh Circuit. On September 25, 2007, following briefing and oral argument, the Court vacated the Agency's Order in an unpublished opinion. *Krishna-Iyer* v. *DEA*, No. 06–15034 (11th Cir. 2007), Slip Op. at 3. The Court declared:

> In considering Petitioner's experience in dispensing controlled substances under factor 2, the DEA identified only four visits by three undercover 'patient,' who were all attempting to make a case against her. The DEA failed to consider Petitioner's experience with twelve patients whose medical charts were seized by the DEA, or with thousands of other patients. In short, the DEA did not consider any of Petitioner's positive experience in dispensing controlled substances. This is an arbitrary and unfair analysis of Petitioner's experience.

Id. The Court therefore vacated the Order and remanded the case for reconsideration, directing that ''DEA should pay particular attention to the entire corpus of Petitioner's record in dispensing controlled substances, not only the experience of [the] undercover officer.'' *Id.* The Court further ordered that ''[t]he five factors should * * * be re-balanced.'' *Id.*

On September 15, 2008, the Parties submitted a joint motion which proposed a resolution of the matter. More specifically, the Parties propose that I ''issue a new final Order consistent with the direction of the * * * Court of Appeals.'' Joint Motion at 2. The Parties also request that were I to find that ''revocation or suspension is still an appropriate outcome,'' that the sanction be limited ''to suspension of [her] registration for the time'' that the Final Order remained in effect. The Parties also requested that I direct that Respondent's pending renewal application be acted upon expeditiously. Finally, the Parties represented that if I concurred with their proposed resolution, they would enter into a Memorandum of Agreement (MOA) under which Respondent's registration will be renewed subject to the condition that for a one year period, she file monthly reports with the Agency's Miami Field Division providing information regarding her prescribing of controlled substances.

Attached to the Joint Motion was Respondent's statement. In her

[5] In light of my findings with respect to factors two and four, I conclude that it is unnecessary to make findings with respect to the remaining factors.

statement, Respondent: (1) ''Acknowledge[d] wrongdoing for failing to conduct physical examinations of the three undercover patients in this case''; (2) ''acknowledge[d] wrongdoing for improperly indicating on the charts of the undercover patients that she had conducted a physical examination of'' them; and (3) ''acknowledge[d] that she had presigned various prescriptions and * * * understands that this was improper.'' Respondent's Statement at 1. Respondent also apologized for her conduct with respect to each of the above actions and promises that she will not engage in similar conduct in the future.[1] *Id.*

Respondent also stated that she has reviewed the Agency's earlier decision, that she ''has reexamined her conduct with respect to the three undercover patients in light of the [Agency's] decision and has re-evaluated the transcripts of the visits of the undercover patients in light of the * * * decision.'' *Id.* Respondent further stated that ''she regret[ed] that she prescribed the medications which she prescribed to the undercover patients'' and ''apologized * * * for her conduct.'' *Id.* Respondent also promised that ''such conduct has not occurred since [the undercover visits] and will not occur again.'' [2]

Findings

I incorporate by reference my findings of fact contained in the original order and found at pages 71 FR at 52149–56. As previously found, and as Respondent acknowledges, she issued controlled substance prescriptions to three undercover operatives without performing physical examinations on them and falsified medical records to indicate that she had performed a physical exam. Moreover, Respondent prescribed controlled substances to the undercover operatives even though each of them represented that they were not in pain and were obtaining the drugs from non-legitimate sources such as friends or family members. Moreover, during each of the visits, Respondent made statements that indicated that she knew the patients were seeking the drugs to abuse them and not to treat a legitimate medical condition. *See id.* at 52150 (Respondent stating during first undercover visit: ''Lorcet 10/650. See, this is a shame then that you have to take the medicine for the habit.''); *id.* at 52152 (after acknowledging that second undercover operative had told her that he was taking four to five Vicodin a day even though he did not have pain, and was taking them because he ''functioned better,'' Respondent asked him if he ''want[ed] to go to substance abuse program or * * * be maintained on the vicodin?''); *id.* (stating to second undercover operative ''maybe I'm sympathetic to the people that allow themselves to slip into drugs''); *id.* at 52154 (during visit of third operative, when asked by her nurse, ''what's the source of the pain?,'' replying: ''I guess he feels no pain, he just feels better.''); *id.* (stating to third visitor: ''we will not be supporting just a drug habit'').

Having reviewed—for a second time—the twelve patient files that were seized during the January 26, 2000 search, I further find that Respondent discharged five of these patients prior to the search. More specifically, I find that: (1) Respondent discharged K.L. on February 2, 1998, upon her office's being notified that she had altered a prescription; (2) Respondent discharged R.H. on February 11, 1999, for various reasons including his having claimed that his drugs had been lost or stolen, and his coming in early to obtain new prescriptions claiming that he was going out of town; (3) Respondent discharged J.B. on December 1, 1998, after her office was notified that she had been arrested for photocopying prescriptions and presenting them for filling to multiple pharmacies; (4) Respondent discharged R.S. on December 2, 1999, after being called by his mother who reported that he was abusing his medications; and (5) Respondent discharged J.L. on January 24, 2000, after an anonymous caller reported to Respondent's office that he was simultaneously receiving treatment at a methadone clinic. *See* RX 21, at 4, 17, 23, 24 & 34

As stated above, the Court of Appeals vacated the original Order on the ground that it failed to consider ''any of'' what it termed [Respondent's] ''positive experience in dispensing controlled substances.'' Slip. Op. at 3. The Court specifically noted that I had not considered Respondent's experience with the twelve patients whose charts were seized in a search of her office, ''or with thousands of other patients.'' *Id.* at 3.

The Court of Appeals did not cite to any decision of either this Agency or another court defining the term ''positive experience.'' Nor did the Court offer any guidance as to the meaning of this term, which is not to be found in the Act.

For the purpose of resolving this matter, I therefore assume—without deciding—that the twelve patient charts establish that Respondent's prescribing of controlled substance to these individuals constitutes ''positive experience''—whatever that means.[3]

[1] With respect to the pre-signing of prescriptions, Respondent stated that ''she had not engaged in such conduct since being advised by the DEA that such conduct was improper and promises that she will not in the future.'' Respondent's Statement at 1.

[2] Respondent also expressed regret and apologized for doctor-shopping and inappropriate diversion of drugs at her clinic. Respondent's Statement at 2. I acknowledge (as I did in the original decision) the extensive efforts Respondent has undertaken to prevent the diversion and abuse of drugs by her patients. I also acknowledge Respondent's successful completion of the one-year period of monitoring of her practice.

[3] Having carefully re-reviewed the charts, it should be noted that some of the files suggest that this is an assumption which is highly favorable to Respondent. Under agency precedent, DEA's authority to suspend or revoke a registration is not limited to those instances in which a practitioner intentionally diverts. *See Paul J. Caragine, Jr.*, 63 FR 51592 (1998). A practitioner who ignores the warning signs that her patients are either personally abusing or diverting controlled substances commits ''acts inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), even if she is merely gullible or naïve. 63 FR at 51600. The twelve patient charts cited by Respondent as evidence of her ''positive experience'' included numerous instances in which Respondent appears to have ignored warning signs that the patient was either abusing or diverting controlled substances.

For example, according to Respondent's evidence, ''[o]n 10/05/99 a notation written in [C.A.'s] progress notes states, 'That the patient called to say that a [D.M.] will call and tell you I'm selling my drugs.' It was later discovered that the patient was in jail for violation of probation and marijuana.'' RX 21, at 2. In her testimony, Respondent did not address what action she took in response to this unusual phone call. *See* Tr. 433–34. Moreover, the actual progress note for C.A.'s October 5 visit is missing. Also missing are the progress notes for numerous other office visits which occurred (according to Respondent's billing records) on October 7 and 25, November 8 and December 17.

On July 28, 1998, Respondent issued a prescription for a drug (Soma) to C.C. RX 21, at 8. That same day, Respondent's office received a phone call from a Walgreens pharmacy reporting that two days earlier, C.C. had filled a prescription for the same drug which was issued by a different physician. *Id.* C.C. was thus clearly engaged in doctor shopping.

Respondent saw C.C. three days later and yet there is no indication in the progress note that she even questioned him about the incident and whether he was seeing other doctors. RX 90, at 29. At this visit, Respondent issued him a prescription for Dilaudid, a schedule II controlled substance. *Id.* C.C. also demonstrated a consistent pattern of coming in early. Respondent nonetheless continued to prescribe controlled substances to him and did not discharge him until approximately a year and a half after the Walgreen's incident. RX 90, at 1.

Respondent had previously discharged R.H. based on a drug test which showed that he was ''positive for drug dependency.'' RX 92, at 22. Respondent, however, accepted him back into her practice. *Id.* It is acknowledged that upon his return to her practice, Respondent counseled R.H. that if he returned ''to the same state of medications taking'' as ''in the past, we will not be not be able to continue.'' *Id.* During the visit, Respondent issued him a prescription for Dilaudid. *Id.*

Two days later, however, R.H. returned to Respondent and complained that he could only get part of his prescription filled and that he had come back to get the balance of forty tablets. Respondent ''continued his prescription for Dilaudid,'' *id.* at 21, even though the original prescription was still valid under Federal law.

After a number of additional visits, in early October, R.H. came in and represented that his

Moreover, although there is absolutely no evidence in the record regarding the propriety of Respondent's prescribing of controlled substances to the ''thousands of other patients'' she has treated, for the purpose of resolving this matter, I again assume that her prescribings to these individuals constitutes ''positive experience.''

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to ''dispense a controlled substance* * * may be suspended or revoked by the Attorney General upon a finding that the registrant* * * *has committed such acts* as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. § 824(a)(4) (emphasis added). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing* * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). It is well settled that I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.*; *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005). Moreover, I am ''not required to make findings as to all of the factors.'' *See Hoxie*, 419 F.3d at 482; *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).59

As explained below, I adhere to my initial findings regarding factors one through four. As found in the original Order, the State of Florida took no action against Respondent's state medical license and Respondent has not been convicted of an offense under either Federal or State laws relating to controlled substances. 71 FR at 52158–59. DEA has long held, however, that a State's failure to take action against a registrant's medical license is not dispositive in determining whether the continuation of a registration is in the public interest. *See, e.g., Mortimer B. Levin*, 55 FR 8209, 8210 (1990) (holding that practitioner's reinstatement by state board ''is not dispositive''; ''DEA maintains a separate oversight responsibility with respect to the handling of controlled substances and has a statutory obligation to make its independent determination as to whether the granting of [a registration] would be in the public interest''). Nor is the fact that a registrant/applicant has not been convicted of a controlled substance offense dispositive of whether the continuation of her registration is in the public interest. *See also Edmund Chein*, 72 FR 6580, 6593 n.22 (2007).

Pursuant to the Court of Appeals' judgment, I have re-considered the additional evidence pertaining to Respondent's ''positive experience.'' Having done so, I again conclude that Respondent violated Federal law and regulations in issuing the prescriptions to the undercover operatives. I also conclude that Respondent violated Federal law and regulations when she pre-signed prescriptions (which she gave to her nurse) and delegated to him her authority to prescribe controlled substances, even though he was not registered to prescribe under Federal law and could not lawfully prescribe controlled substances under state law. I therefore conclude that Respondent committed acts inconsistent with the public interest and which support the suspension or revocation of her registration. 21 U.S.C. 824(a)(4).

However, Respondent has now credibly acknowledged that her prescribing to the undercover operatives and her pre-signing of the prescriptions was improper. She has also credibly stated that she has not engaged in such conduct since the events at issue here and has promised that she will not do so in the future.[4] I therefore further conclude that Respondent has accepted responsibility for her misconduct and can be entrusted with a new registration subject to the condition agreed to by the parties.

Factor Two and Four—Respondent's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Under the CSA, it is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical

drugs had been ruined because he lived in a duplex and the landlord's hot water heater had failed and flooded the whole house. *Id.* at 16. As Respondent noted, R.H. had brought in ''the whole bottle of Dilaudid with water in it. I cannot tell if it is just a powder or medicine.'' *Id.* Respondent issued R.H. a new prescription notwithstanding the likely implausibility of his story and his past record as a drug abuser. *Id.* Nor is there any evidence that she attempted to verify whether the substance in the bottle was in fact Dilaudid. In addition, R.H. made numerous early visits, and on another occasion, obtained prescriptions for Oxycontin and Percocet after having claimed that he lost a prescription for Dilaudid. *Id.* at 9.

While Respondent discharged J.B. on December 1, 1998, and represents that J.B. was discharged after being arrested for photocopying prescriptions, *see* RX 21, at 4; the online records of the Pinellas County, Florida courts indicate that she had been convicted on July 10, 1996, of attempting to obtain a controlled substance by fraud, and that on June 9, 1998, a new complaint charging her with obtaining or attempting to obtain a controlled substance by fraud had been filed against her. Moreover, J.B. made numerous early visits, a classic behavior of drug seekers. *See* RX 93.

R.C. came in on October 21, 1998, nine days after his initial visit with Respondent, and told her that he had to come in early because he was going to New York for four weeks and would run out of medicine while he was out of town. RX 94, at 12. Yet eight days later, R.C. was back to see Respondent and seeking additional narcotics because he was ''going to Puerto Rico for some relief work.'' *Id.* at 11. However, during R.C.'s initial visit, R.C. had stated that he was ''on disability'' and was ''not working.'' *Id.* at 13. Respondent nonetheless issued him new prescriptions. *Id.* at 11. While it is unclear whether R.C. told Respondent that he would be gone for six weeks or six months, R.C. went back to see Respondent on November 18 and 24, as well as on December 1, 1998. *Id.* at 15.

On August 21, 1998, Respondent gave B.B. a prescription for Dilaudid (and Soma) for pain in various body parts and indicated that she would be seen ''next month for the followup.'' RX 99, at 7. On September 2 (eleven days later), B.B. returned to Respondent and reported that ''she is going to Miami for about three to four weeks for her deposition.'' *Id.* at 6. Respondent ''continued[d] her prescriptions for Dilaudid and Soma.'' *Id.* Twelve days later, B.B. returned to Respondent. *Id.* at 5. According to the progress note: B.B. ''is going to Miami for her case. She will be gone four to six weeks. She came in early today because she does not have enough medicine for four to six weeks. '' *Id.* Respondent issued B.B. additional prescriptions for Dilaudid (and Soma) and indicated that she would be seen again in a month. *Id.* Ten days later, B.B. returned again to Respondent. *Id.* at 4. According to the progress note, B.B. ''came early today because she will be evacuated from the Fort Lauderdale area. No more court cases.'' *Id.* B.B. also told Respondent that the pharmacy had called and told her that ''they could not fill the prescription, because it was unreadable,'' (as if the pharmacy would not have called Respondent to verify the script) and that B.B. ''could not get the prescription back from the pharmacy, so she does not have any medicine [because] she had to leave it in Fort Lauderdale.'' *Id.*

[4] In the original Order, I acknowledged that Respondent had undertaken substantial measures to reform her practice. 71 FR at 52156 & 52159.

purpose.'' *See United States* v. *Moore*, 423 U.S. 122 (1975); *see also* 21 CFR 1306.04(a) (''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances'').

As the Supreme Court recently explained, ''the prescription requirement* * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon*, 546 U.S. 243, 274 (2006) (citing *Moore*, 423 U.S. 122, 135 & 143 (1975)).

In this matter, the Government's presentation largely focused on two allegations: (1) That Respondent lacked a legitimate purpose in issuing the prescriptions to the undercover operatives, and (2) that Respondent pre-signed blank prescriptions which she gave to her nurse and allowed him to prescribe drugs even though the nurse was not authorized under either Federal or State law to prescribe controlled substances.

Whether this conduct is evaluated under factor two—the experience factor, or factor four—the compliance factor, or both, is of no legal consequence. In establishing its *prima facie* case, the fundamental question is whether Respondent ''has committed such acts as would render [her] registration * * * inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). As explained above, this Agency has long held—and other courts of appeals have at least implicitly recognized—that findings under a single factor are sufficient to support the revocation of a registration. *See Hoxie*, 419 F.3d at 482; *Morall*, 412 F.3d at 173–74.

In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.[5]

As previously found, on three separate occasions, undercover operatives went to Respondent seeking prescriptions for controlled substances. Each of the operatives stated that they were not in pain and that they had been obtaining controlled substances from such non-legitimate sources as a ''girlfriend'' (first visitor), ''a friend'' (second visitor) and ''a family member who has a prescription'' (third visitor). 71 FR at 52150, 52152, and 52154. Respondent did not perform a physical examination on any of the three operatives, even though she acknowledged that performing a physical exam ''is the standard of practice'' and ''our Rule No.1.'' *Id.* at 52154. Moreover, she falsified each operative's medical record to indicate that she had performed a physical exam. *Id.* at 52150 (first visitor), 52153 (second visitor), & 52154 (third visitor).

Most significantly, Respondent's statements as recorded on the wire amply demonstrate that she knew that the operatives were seeking the drugs not for the purpose of treating a legitimate medical condition, but to abuse them. *See* 71 FR at 52150 (stating to first visitor: ''this is a shame * * * that you have to take the medicine for the habit,'' ''you can tell me that you want to come out of drugs''); *id.* at 52152 (asking second visitor: ''you don't have pain but you are taking vicodin?'' and do you ''want to go to substance abuse program or do you want to be maintained on the vicodin?''); *id.* (stating to second visitor: ''maybe I'm sympathetic to the people that allow themselves to slip into drugs''); *id.* at 52154 (during visit of third operative, when asked by her nurse, ''what's the source of the pain?'', replying: ''I guess he feels no pain, he just feels better.''); *id.* (stating to third visitor: ''we will not be supporting just a drug habit'').

In various briefs, Respondent maintains that at the time of the search, she had already discharged 6 of the 12 patients ''for various reasons including non-compliance with the Prescription Pain Medication Agreement, criminal acts or arrest.'' Resp. Exceptions to ALJ Dec. at 42. She contends that this is exculpatory evidence of her intent to not improperly prescribe drugs. *Id.*

As found above, it is true that five of the patients whose files were seized had been discharged before the search was conducted. Yet even assuming that this evidence is relevant as to Respondent's intent with respect to her prescribings to the undercover operatives, it is not more probative of her intent during the visits than the evidence as to what actually occurred during those visits. Indeed, even if the operatives' initial statements to Respondent were ambiguous as to why they were seeking the drugs, Respondent did not perform a physical exam on any of the operatives (yet falsified the records to indicate that she had done so) and her subsequent statements during the visits made clear that she had resolved any doubt as to why the operatives were seeking the drugs. In short, the evidence is clear that Respondent issued prescriptions to each of the undercover operatives knowing that they were seeking controlled substances for the purpose of abusing them and not to treat a legitimate medical condition.[6] I thus conclude that Respondent lacked a legitimate medical purpose and thus violated Federal law and DEA regulations when she issued the prescriptions to the undercover operatives.

In her exceptions, Respondent argued that ''her treatment of each of the [twelve] patients [whose files were seized] was proper,'' and that the ''Government presented no evidence suggesting that the treatment of those twelve patients was anything but proper.'' *Id.* Respondent also contends that she ''properly treated thousands of patients for chronic pain,'' and that ''the Government was unable to present any evidence that there was any problem with any non-undercover patient.'' *Id.* at 64. Relatedly, the Court of Appeals has instructed that the experience factor be reconsidered ''pay[ing] particular attention to the entire corpus of Petitioner's record in dispensing controlled substances.'' Slip Op. at 3.

As stated above, for the purpose of resolving this matter, I have assumed that Respondent's prescribings of

[5] The Court of Appeals interpreted my prior decision as ''[b]alancing the factors and according 'dispositive' weight to factor five.'' Slip. Op. at 5. This suggests that the factors that favored Respondent's continued registration (factors one and three) were in equipoise with the factors that did not support her continued registration. They were not. As explained above, even if Respondent's conduct had been discussed under a single factor, the conduct still would have established a *prima facie* case that her continued registration was inconsistent with the public interest. Factor five was dispositive because once the Government established a *prima facie* case, the burden shifted to the Respondent to demonstrate that her continued registration was consistent with the public interest.

[6] I acknowledge that some courts allow a defendant in criminal matters to admit evidence of her ''prior good acts'' to prove she lacked criminal intent. *See United States* v. *Thomas*, 134 F.3d 975, 979 (9th Cir. 1998); *United States* v. *Garvin*, 565 F.2d 519, 521–22 (8th Cir. 1977). Putting aside that this is not a criminal proceeding and the Federal Rules of Evidence do not apply, Respondent made no showing that the factual circumstances surrounding her discharging of these patients were similar to the circumstances involved in the undercover visits. Indeed, in four of the five instances, the patients had been caught by others engaging in problematic behavior such as criminal acts present altering or photocopying prescriptions, (K.L. and J.B.), that the patient was receiving drugs from another clinic (J.L.), or a report from the patient's mother that he was abusing drugs (R.S.). RX 21, at 4, 23, 24 and 34.

controlled substances to every other person she has treated constitute ''positive experience.'' Her prescribings to thousands of other patients do not, however, render her prescribings to the undercover officers any less unlawful, or any less acts which ''are inconsistent with the public interest.'' 21 U.S.C. § 823(f).

In enacting the CSA, Congress recognized that ''[m]any of the drugs included within [the CSA] have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.'' 21 U.S.C. 801(1). Moreover, under the CSA, a practitioner is not entitled to a registration unless she ''is authorized to dispense * * * controlled substances under the laws of the State in which [she] practices.'' 21 U.S.C. 823(f). Because under law, registration is limited to those who have authority to dispense controlled substances in the course of professional practice, and patients with legitimate medical conditions routinely seek treatment from licensed medical professionals, every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of her professional career.

Thus, in past cases, this Agency has given no more than nominal weight to a practitioner's evidence that he has dispensed controlled substances to thousands of patients in circumstances which did not involve diversion. *See, e.g., Caragine,* 63 FR at 51599 (''[T]he Government does not dispute that during Respondent's 20 years in practice he has seen over 15,000 patients. At issue in this proceeding is Respondent's controlled substance prescribing to 18 patients.''); *id.* at 51600 (''[E]ven though the patients at issue are only a small portion of Respondent's patient population, his prescribing of controlled substances to these individuals raises serious concerns regarding [his] ability to responsibly handle controlled substances in the future.'').

While in *Caragine*, my predecessor did consider ''that the patients at issue ma[de] up a very small percentage of Respondent's total patient population,'' he also noted—in contrast to the prescribings at issue here—''that [those] patients had legitimate medical problems that warranted some form of treatment.'' *Id.* at 51601. Moreover, in contrast to this case, in *Caragine*, there was no evidence that the practitioner had intentionally diverted. *Id. See also Medicine Shoppe—Jonesborough*, 73 FR 364, 386 & n.56 (2008) (noting that pharmacy ''had 17,000 patients,'' but that ''[n]o amount of legitimate dispensings can render * * * flagrant violations [acts which are] 'consistent with the public interest.' ''), *aff'd, Medicine Shoppe-Jonesborough* v. *DEA*, slip. op. at 11 (6th Cir. Nov. 13, 2008). Indeed, DEA has revoked other practitioners' registrations for committing as few as two acts of diversion. *See Alan H. Olefsky*, 57 FR 928, 928–29 (1992) (revoking registration based on physician's presentation of two fraudulent prescriptions to pharmacy and noting that the respondent ''refuses to accept responsibility for his actions and does not even acknowledge the criminality of his behavior''). *See also Sokoloff* v. *Saxbe*, 501 F.2d 571, 576 (2d Cir. 1974) (upholding revocation of practitioner's registration based on *nolo contendere* plea to three counts of unlawful distribution).

Accordingly, evidence that a practitioner has treated thousands of patients does not negate a *prima facie* showing that the practitioner has committed acts inconsistent with the public interest. While such evidence may be of some weight in assessing whether a practitioner has credibly shown that she has reformed her practices, where a practitioner commits intentional acts of diversion and insists she did nothing wrong, such evidence is entitled to no weight. As I held in the original decision, I again conclude that Respondent's dispensings to the undercover officers and her pre-signing of prescriptions and unlawful delegation of her prescribing authority to her nurse, establish a *prima facie* case that her continued registration is ''inconsistent with the public interest.''

Under longstanding Agency precedent, where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' '' *Medicine Shoppe*, 73 FR at 387 (quoting *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA*, 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [her] actions and demonstrate that [she] will not engage in future misconduct.'' *Medicine Shoppe*, 73 FR at 387; *see also Jackson*, 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA*, 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

In this matter, I previously revoked Respondent's registration because notwithstanding all of the measures she had undertaken to reform her practice, she was the person with the prescribing authority and had refused to acknowledge her responsibility under the law. 71 FR at 52159. Had this case come back to me with the same evidentiary record as before, I would again revoke her registration. Respondent, however, has now acknowledged wrongdoing with respect to both her prescribings to the undercover operatives, as well as her pre-signing of prescriptions and delegation of her prescribing authority to her nurse, who could not legally prescribe a controlled substance under either the CSA or Florida Law. Moreover, Respondent's registration was effectively suspended for a period of approximately one year. I therefore conclude that the parties' proposed resolution of this matter is in the public interest.

* * * * *

The diversion of controlled substances has become an increasingly grave threat to this nation's public health and safety. According to The National Center on Addiction and Substance Abuse (CASA), ''[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003.'' National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005). Moreover, ''[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000).'' *Id.* Relatedly, ''[b]etween 1992 and 2003, there has been a * * * 140.5 percent increase in the self-reported abuse of prescription opioids,'' and in the same period, the ''abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse.'' *Id.* at 4.[7]

[7] According to a recent newspaper article, ''[p]rescription painkiller and anti-anxiety drugs

Continued

While some isolated decisions of this Agency may suggest that a practitioner who committed only a few acts of diversion was entitled to regain his registration even without having to accept responsibility for his misconduct, *see Anant N. Mauskar*, 63 FR 13687, 13689 (1998), the great weight of the Agency's decisions are to the contrary. In any event, the increase in the abuse of prescription controlled substances calls for a clarification of this Agency's policy. Because of the grave and increasing harm to public health and safety caused by the diversion of prescription controlled substances, even where the Agency's proof establishes that a practitioner has committed only a few acts of diversion, this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct.[8] Put another way, even where the Government proves only a few instances of illegal prescribing in the ''entire corpus'' of a practitioner's experience, the Government has nonetheless made out a *prima facie* case and thus shifted the burden to the registrant to show why he should be entrusted with a new registration.[9]

I have abided by the judgment of the Court of Appeals in this matter. However, some may interpret the Court's decision as suggesting that ''the entire corpus'' of a practitioner's record in dispensing controlled substances can outweigh a practitioner's intentional acts of diversion where DEA only proves that a few acts of diversion have occurred.

The Court's decision was not published and the Court did not instruct the Agency as to how much weight the entire corpus should be given. Nor did the Court explain whether ''the entire corpus'' should be considered as part of the Government's *prima facie* case, or as part of the registrant's rebuttal of the Government's case.

DEA therefore does not interpret the decision as altering the manner in which similar arguments have been dealt with in prior cases. While such evidence may have some probative value, it does not negate a *prima facie* showing that a registrant/applicant has committed acts that are inconsistent with the public interest. It may, however, be entitled to some weight in assessing whether a registrant/applicant has demonstrated that she can be entrusted with a new registration where the Government's proof is limited to relatively few acts and a registrant puts forward credible evidence that she has accepted responsibility for her misconduct.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that the DEA Certificate of Registration issued to Jayam Krishna-Iyer, M.D., be, and it hereby is, suspended. I further order that the suspension shall be retroactive and limited to the period beginning on October 2, 2006, and ending on October 2, 2007, when her registration was restored pursuant to the judgment of the Court of Appeals. I further order that the application of Jayam Krishna-Iyer, M.D., for renewal of her registration be, and it hereby is, granted subject to the condition that she file monthly reports with the Special Agent in Charge (or his designee) of the Miami Field Division for a period of one year. The reports shall list all controlled substances prescribed by the patient's name, the date, the name of the drug, its strength, the quantity prescribed, and the number of refills authorized. The reports shall be due no later than the tenth day of the subsequent month and shall list all patients in alphabetical order.[10] Failure to comply with the terms of this Order shall be grounds for the suspension or revocation of Respondent's registration. This Order is effective immediately.

Dated: December 19, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–31412 Filed 1–5–09; 8:45 am]

BILLING CODE 4410–09–P

now kill about 500 people a year in the Tampa Bay area, triple the number killed by illegal drugs such as cocaine and heroin.'' Chris Tisch & Abbie Vansickle, *Deadly Combinations*, St. Petersburg Times (Feb. 17, 2008), at 1. This article further noted that while at the time of publication, the figures for the year 2007 were not complete, ''the area is on pace for about 550 deaths,'' and that ''prescription drug overdoses are likely to overtake car crashes as the leading cause of accidental death.'' *Id.* In contrast, in 2006, 433 people died of prescription drug overdoses, and in 2005, 339 died. *Id.* According to the Circuit Judge who runs the Pinellas County drug court, ''This has become an epidemic.'' *Id.*

[8] Depending upon the facts and circumstances, a registrant/applicant may also be required to show what corrective measures he/she has instituted to prevent such acts from re-occurring.

[9] To the extent *Mauskar*, or any other decision of this Agency suggests otherwise, it is overruled.

[10] If a patient received multiple prescriptions, all prescriptions issued to the patient within the calendar month shall be listed before the prescriptions for the next patient are reported.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments on the proposed extension of the Labor Market Information (LMI) Cooperative Agreement application package. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 9, 2009.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7099. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, telephone number 202–691–7099. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS enters into Cooperative Agreements with State Workforce Agencies (SWAs) annually to provide financial assistance to the SWAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Quarterly Census of Employment and Wages, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SWAs and monitor their financial and programmatic performance and adherence to administrative requirements imposed by common regulations implementing OMB Circular A–102 and other grant related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

The Cooperative Agreement application package being submitted for approval is representative of the package sent every year to state agencies. The work statements included in the Cooperative Agreement application also are representative of what is included in the whole LMI Cooperative Agreement package. The final Cooperative Agreement, including the work statements, will be submitted separately to the Office of Management and Budget for review of any minor year-to-year information collection burden changes these documents may contain.

II. Current Action

The BLS requests clearance for the LMI Cooperative Agreement from the Office of Management and Budget. The BLS is requesting an extension of the existing clearance for the LMI Cooperative Agreement package.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079.

Affected Public: State, Local, or Tribal Governments.

Frequency: Monthly, quarterly, annually.

Information collection	Respondents	Frequency	Responses	Time	Total hours
Work Statements	55	1	55	1–2 hr.	55–110
BIF (LMI 1A, 1B)	55	1	55	1–6 hr.	55–330
Quarterly Automated Financial Reports	48	4	192	10–50 min.	32–160
Monthly Automated Financial Reports	48	8	384	5–25 min.	32–160
BLS Cooperative Statistics Financial Report (LMI 2A)	7	12	84	1–5 hr.	84–420
Quarterly Status Report (LMI 2B)	1–30	4	4–120	1 hr.	4–120
Budget Variance Request Form	1–55	1	1–55	5–25 min.	0–23
Total	1–55		775–945		262–1,323
Average Totals	55		860		793

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 30th day of December 2008.

Kim Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E8–31393 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,880; TA–W–63,880A; TA–W–63,880B; TA–W–63,880C; TA–W–63,880D; TA–W–63,880E]

Cequent Electrical Products, Inc. Tekonsha, MI; Including Employees in Support of Cequent Electrical Products, Inc., Tekonsha, MI, Working in the Following Locations: Washougal, WA, West Linn, OR, Temecula, CA, Urbandale, IA, Weston, WI; 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 November 26, 2008, applicable to workers of Cequent Electrical Products, Inc., Tekonsha, Michigan. The notice was published in the **Federal Register** on December 10, 2008 (73 FR 75137).

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 brake controls, breakaway kits and lights for the automotive and trailer industries.

New information shows that worker separations have occurred involving employees of the Tekonsha, Michigan facility of Cequent Electrical Products, Inc. working out of Washougal, Washington; West Linn, Oregon; Temecula, California; Urbandale, Iowa; and Weston, Wisconsin. Mr. Larry Kelley, Ms. Susan Savage, Mr. Paul Crommelin, Mr. Charles Voorhis and Mr. Michael Vruwink provided sales functions supporting the production of brake controls, breakaway kits and lights for the automotive and trailer

industries at the Tekonsha, Michigan location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Tekonsha, Michigan, facility of Cequent Electrical Products, Inc. working out of the above-mentioned locations.

The intent of the Department's certification is to include all workers of Cequent Electrical Products, Inc., Tekonsha, Michigan, who were adversely affected by increased imports of brake controls, breakaway kits and lights for the automobile and trailer industries.

The amended notice applicable to TA–W–63,880 is hereby issued as follows:

All workers of Cequent Electrical Products, Inc., Tekonsha, Michigan, including employees of Cequent Electrical Products, Inc., Tekonsha, Michigan working out of Washougal, Washington (TA–W–63,880A), West Linn, Oregon (TA–W–63,880B), Temecula, California (TA–W–63,880C), Urbandale, Iowa (TA–W–63,880D), and Weston, Wisconsin (TA–W–63,880E), who became totally or partially separated from employment on or after August 6, 2007, through November 26, 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31327 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,608]

Eljer, Inc., Including On-Site Leased Workers From Carol Harris Staffing, LLC, Ford City, PA; 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 December 12, 2008, applicable to workers of Eljer, Inc., Ford City, Pennsylvania. The notice will be published soon in the **Federal Register**.

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 vitreous china sanitary ware.

New information shows that workers leased from Carol Harris Staffing, LLC were employed on-site at the Ford City, Pennsylvania location of Eljer, Inc. The Department has determined that these workers were sufficiently under the control of Eljer, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Carol Harris Staffing, LLC working on-site at the Ford City, Pennsylvania location of the subject firm.

The intent of the Department's certification is to include all workers employed at Eljer, Inc., Ford City, Pennsylvania, who were adversely affected by a shift in production of vitreous china sanitary ware to Mexico.

The amended notice applicable to TA–W–64,608 is hereby issued as follows:

All workers of Eljer, Inc., including on-site leased workers from Carol Harris Staffing, LLC, Ford City, Pennsylvania, who become totally or partially separated from employment on or after January 20, 2009 through December 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31322 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,483]

Fisher & Company, Inc. Corporate Office, St. Clair Shores, MI; 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 November 26, 2008, applicable to workers of Fisher & Company, Inc., Corporate Office, St. Clair Shores, Michigan. The notice was published in the **Federal Register** on December 10, 2008 (73 FR 75137).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in administrative and support functions for recliner mechanisms for automobile seats.

Findings show that there was a previous certification, TA–W–60,421, issued on December 18, 2006, for the workers of the Corporate Office, St. Clair Shores, Michigan location of the subject firm. That certification expires December 18, 2008. To avoid an overlap in worker group coverage for the workers of the Corporate Office, St. Clair Shores, Michigan location, the certification is being amended to change the impact date from November 19, 2007 to December 19, 2008.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Fisher & Company, Inc., Corporate Office who were adversely affected by a shift in production of recliner mechanisms for automobile seats to Mexico.

The amended notice applicable to TA–W–64,483 is hereby issued as follows:

All workers of Fisher & Company, Inc., Corporate Office, St, Clair Shores, Michigan, who became totally or partially separated from employment on or after December 19, 2008 through November 26, 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 24th day of December 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31335 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,913]

Five Rivers Electronic Innovations, LLC, Greeneville, 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 September 30, 2008, applicable to workers of Five Rivers Electronic Innovations, LLC, Greeneville, Tennessee. The notice was published in the **Federal Register** on October 20, 2008 (73 FR 62322).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce printed circuit board assemblies.

Findings show that the workers producing printed circuit board assemblies at the subject firm are separately identifiable from workers of Five Rivers Electronic Innovations, LLC in Greeneville, Tennessee that were previously covered by certifications as follows: TA–W–58,628 Color Television Product Line; TA–W–58,628A Plastic Parts Product Line; and TA–W–58,628B Distribution/Warehouse Center. Each of these certifications expired February 7, 2008.

The current certification is being amended to limit the coverage to workers of Five Rivers Electronic Innovations, LLC, Greeneville, Tennessee, engaged in employment related to the production of printed circuit board assemblies.

The amended notice applicable to TA–W–63,913 is hereby issued as follows:

Workers of Five Rivers Electronic Innovations, LLC, Greeneville, Tennessee, engaged in employment related to the production of printed circuit board assemblies, who became totally or partially separated from employment on or after August 19, 2007 through September 30, 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 in Washington, DC, this 29th day of December, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31329 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,893]

Ingersoll-Rand Ives Division Formerly Harrow Products, Inc. Including On-Site Leased Workers From Talent Tree and Ahead Human Resources, New Haven, CT; 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 November 19, 2008, applicable to workers of Ingersoll-Rand, Ives Division, including on-site leased workers from Talent Tree and Ahead Human Resources, New Haven, Connecticut. The notice was published in the **Federal Register** on December 10, 2008 (73 FR 75134).

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 building and architectural hardware such as nuts, bolts, screws, etc.

New information provided to the Department shows that some of the workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for the former owner, Harrow Products, Inc. Accordingly, the Department is amending the certification to include those workers.

The intent of the Department's certification is to include all workers of Ingersoll-Rand, Ives Division, New Haven, Connecticut, who were adversely affected by increased imports of building and architectural hardware.

The amended notice applicable to TA–W–63,893 is hereby issued as follows:

All workers of Ingersoll-Rand, Ives Division, formerly Harrow Products, Inc., including on-site leased workers from Talent Tree and Ahead Human Resources, New Haven, Connecticut, who became totally or partially separated from employment on or after August 18, 2007, through November 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31328 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,144]

Royal Home Fashions, a Subsidiary of Croscill Incorporated, Currently Known as Croscill Acquisition, LLC, Durham, NC; 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 April 5, 2007, applicable to workers of Royal Home Fashions, a subsidiary of Croscill Incorporated, Durham, North Carolina. The notice was published in the **Federal Register** on April 24, 2007 (72 FR 20370).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in administrative activities related to the firm's production of house furnishings.

The company reports that in November 2008 Royal Home Fashions, a subsidiary of Croscill Incorporated, was sold to Croscill Acquisition, LLC.

Accordingly, the certification is being amended to include workers at Royal Home Fashions, a subsidiary of Croscill Incorporated, Durham, North Carolina, whose wages are reported under the Unemployment Insurance (UI) tax account for the successor firm, Croscill Acquisition, LLC.

The amended notice applicable to TA–W–61,144 is hereby issued as follows:

All workers of Royal Home Fashions, a subsidiary of Croscill Incorporated, currently

known as Croscill Acquisition, LLC, Durham, North Carolina, who became totally or partially separated from employment on or after February 14, 2006, through April 5, 2009, 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance

[FR Doc. E8–31323 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,225]

Royal Home Fashions, Plant #6, Distribution Center, Currently Known as Croscill Acquisition, LLC, Henderson, NC; 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 April 13, 2007, applicable to workers of Royal Home Fashions, Plant #6, Distribution Center, Henderson, North Carolina. The notice was published in the **Federal Register** on April 26, 2007 (72 FR 20872).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in shipping and receiving of comforters, window treatments, towels, dust ruffles, pillow shams and sheets.

The company reports that in November 2008 Royal Home Fashions was sold to Croscill Acquisition, LLC.

Accordingly, the certification is being amended to include workers at Royal Home Fashions, Plant #6, Distribution Center, Henderson, North Carolina, whose wages are reported under the Unemployment Insurance (UI) tax account for the successor firm, Croscill Acquisition, LLC.

The amended notice applicable to TA–W–61,225 is hereby issued as follows:

''All workers of Royal Home Fashions, Plant #6, Distribution Center, currently known as Croscill Acquisition, LLC, Henderson, North Carolina, who became totally or partially separated from employment on or after March 30, 2006, through April 13, 2009, 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31324 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,478]

Royal Home Fashions A Subsidiary of Croscill, Inc., Plant 8, Currently Known as Croscill Acquisition, LLC, Oxford, NC; 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 May 24, 2007, applicable to workers of Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 8, Oxford, North Carolina. The notice was published in the **Federal Register** on June 7, 2007 (72 FR 31615).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers provide distribution services in support of products produced by Royal Home Fashions.

The company reports that in November 2008 Royal Home Fashions, a subsidiary of Croscill, Inc., was sold to Croscill Acquisition, LLC.

Accordingly, the certification is being amended to include workers at Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 8, Oxford, North Carolina, whose wages are reported under the Unemployment Insurance (UI) tax account for the successor firm, Croscill Acquisition, LLC.

The amended notice applicable to TA–W–61,478 is hereby issued as follows:

All workers of Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 8, currently known as Croscill Acquisition, LLC, Oxford, North Carolina, who became totally or partially separated from employment on or after May 28, 2007, through May 24, 2009, 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31325 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,688]

Royal Home Fashions, a Subsidiary of Croscill, Inc., Plant #4, Currently Known as Croscill Acquisition, LLC, Henderson, NC; 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 August 4, 2008, applicable to workers of Royal Home Fashions, a subsidiary of Croscill, Inc., Plant #4, Henderson, North Carolina. The notice was published in the **Federal Register** on August 21, 2008 (73 FR 49491).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of comforters, window treatments, towels, dust ruffles, pillow shams and sheets.

The company reports that in November 2008 Royal Home Fashions, a subsidiary of Croscill, Inc., was sold to Croscill Acquisition, LLC.

Accordingly, the certification is being amended to include workers at Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 4, Henderson, North Carolina, whose wages are reported under the Unemployment Insurance (UI) tax account for the successor firm, Croscill Acquisition, LLC.

The amended notice applicable to TA–W–63,688 is hereby issued as follows:

All workers of Royal Home Fashions, a subsidiary of Croscill, Inc., Plant #4, currently known as Croscill Acquisition, LLC, Henderson, North Carolina, who became totally or partially separated from employment on or after September 1, 2008, through August 4, 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 24th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31326 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,413]

Visteon Systems, LLC, North Penn Plant, Electronics Products Group, Including On-Site Leased Workers From Ryder Integrated Logistics Lansdale, PA; 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, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 15, 2008, applicable to workers of Visteon Systems, LLC, North Penn Plant, Electronics Products Group, including on-site leased workers from Ryder Intergrated Logistics, Lansdale, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce power control modules, SDARS, and sensors.

The review shows that all workers of Visteon Systems, LLC, North Penn Electronics Facility, Lansdale, Pennsylvania, were certified eligible to apply for adjustment assistance under petition number TA–W–60,432, which expired on December 5, 2008.

In order to avoid an overlap in worker group coverage, the Department is amending the current certification for workers of Visteon Systems, LLC, North Penn Plant, Electronics Products Group, Lansdale, Pennsylvania, to change the impact date from October 29, 2007 to December 6, 2008.

The amended notice applicable to TA–W–64,413 is hereby issued as follows:

All workers of Visteon Systems, LLC, North Penn Plant, Electronics Products Group, including on-site leased workers from Ryder Integrated Logistics, Lansdale, Pennsylvania, who became totally or partially separated from employment on or after December 6, 2008 through December 15, 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 in Washington, DC, this 29th day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31333 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,088]

Rexam Closure Systems, Inc., Bowling Green, OH; Notice of Negative Determination on Reconsideration

On November 13, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on November 25, 2008 (73 FR 71693).

The initial investigation resulted in a negative determination based on the finding that imports of plastic closures for plastic food industry packaging did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration the petitioner alleged that the subject firm ''is shifting production of T-tops to China.''

On reconsideration the Department of Labor contacted a company official of the subject firm to address this allegation. The company official stated that during the initial phases of developing the closure plan, Rexam considered shifting production of T-Top product line to China. However, since then, Rexam has decided to sell or scrap the T-Top assets within the United States. Furthermore, the subject firm official confirmed that Rexam did not shift any production from the subject firm abroad.

The petitioner further alleged that ''Rexam is closing in Bowling Green, Ohio due to loss of sales to global competitors.''

In order to establish an import impact on domestic production, the Department conducts a survey of the declining domestic customers of the workers' firm regarding their purchases of like or directly competitive products. The customer survey was not conducted in the initial investigation due to the fact that sales at the subject facility did not decline from 2006 to 2007 or from January through August 2008 over the corresponding period in 2007.

To address the petitioner allegations, the Department requested additional information from the subject firm regarding sales to customers. Further investigation revealed that the subject firm had declining customers in the relevant period. The Department surveyed these customers regarding their purchases of plastic closures (including like or directly competitive products) during 2006, 2007, and January through August 2008 over the corresponding 2007 period. The survey revealed no imports of plastic closures (including like or directly competitive products) during the relevant period.

The subject firm did not import plastic closures for plastic food industry packaging during the relevant period and no shift in production of plastic closures for plastic food industry packaging to a foreign source occurred.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Rexam Closure Systems, Inc., Bowling Green, Ohio.

Signed at Washington, DC, this 23rd day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31330 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,455]

Ideal, St. Augustine, FL; 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 company official on behalf of workers of Ideal, St. Augustine, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31334 Filed 1–5–09; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC; AmerGen Energy Company, LLC, Three Mile Island Nuclear Station, Unit 1; Notice of Availability of the Draft Supplement 37 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, and Public Meeting for the License Renewal of Three Mile Island Nuclear Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 9, 2008 (73 FR 74766), that announces a public meeting for the license renewal of Three Mile Island Nuclear Station, Unit 1. This action is necessary to update the location where the meeting will take place.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Lopas, Environmental Project Manager, Office of Nuclear Reactor Regulation, telephone (301) 415–1147, e-mail: *sarah.lopas@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 74766, in the third column, fifteenth line, the meeting location is corrected to read from ''The Elks Theatre, 4 West Emaus Street, Middletown, PA 17057'' to ''The Sheraton Harrisburg Hershey Hotel, 4650 Lindle Road, Harrisburg, PA 17111.''

Dated at Rockville, Maryland, this 29 day of December 2008.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–31422 Filed 1–5–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–039]

PPL Bell Bend, LLC; Bell Bend Nuclear Power Plant Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

PPL Bell Bend, LLC has submitted an application for a combined license (COL) to build a new unit at its Bell Bend Nuclear Power Plant (BBNPP) Site, located west of the existing Susquehanna Steam Electric Station Site on approximately 882 acres in Luzerne County, Pennsylvania on the Susquehanna River, approximately five miles northeast of Berwick, Pennsylvania. PPL Bell Bend, LLC submitted the application for the COL to the U.S. Nuclear Regulatory Commission (NRC) by letter dated October 10, 2008, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52. A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on November 13, 2008 (73 FR 67214). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on December 29, 2008 (73 FR 79519). A notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application will be published in a future **Federal Register** notice. The purpose of this notice is (1) to inform the public that the NRC staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the COL and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. The U.S. Army Corps of Engineers (Corps), Baltimore District has requested to participate in the preparation of the EIS as a cooperating agency; the NRC has accepted its request. The agencies will cooperate according to the process set forth in the MOU signed by the NRC and the Corps and was published in the **Federal Register** on September 25, 2008 (73 FR 55546).

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act'' (NEPA) of 1969, as amended, the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of NEPA. Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, PPL Bell Bend, LLC submitted the environmental report (ER) as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or from the Publicly Available Records component of NRC's Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html* which provides access through the NRC's Electronic Reading Room link. The accession number in ADAMS for the ER included in the application is ML082890680. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209/301–415–4737 or by e-mail to *pdr.resource@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/bell-bend.html*. In addition, the Mill Memorial Public Library, 495 E Main Street, Nanticoke, PA 18634 and the McBride Memorial Library, 500 N Market Street, Berwick, PA 18603 have agreed to make the ER available for public inspection.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants;

c. 10 CFR Part 100, Reactor Site Criteria;

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process;

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations;

h. Fact Sheet on Nuclear Power Plant Licensing Process;

i. Regulatory 1.206, Combined License Applications for Nuclear Power Plants; and

j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, dated August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for COL at the BBNPP Site. Possible alternatives to the proposed action (issuance of the COL for the BBNPP) include no action, reasonable alternative energy sources, and alternate sites. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR Part 52 is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and as soon as practicable thereafter will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, PPL Bell Bend, LLC;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, who is admitted as a party.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold a public scoping meeting for the EIS regarding the PPL Bell Bend, LLC COL application. The scoping meeting will be held at the Berwick Area Senior High School, 1100 Fowler Avenue, Berwick, Pennsylvania 18603–3799 on Thursday, January 29, 2009. The meeting will convene at 7 p.m. and will continue until approximately 10 p.m. The meeting will be transcribed and will include the following: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below.

Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting either Mrs. Stacey Imboden or Ms. Tomeka Terry by telephone at 1–800–368–5642, extensions 2462 or 1488, or by e-mail to the NRC at *BBNP.COLEIS@nrc.gov* no later than January 22, 2009. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mrs. Imboden's attention no later than January 15, 2009, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the BBNPP COL environmental review to the Chief, Rulemaking, Editing and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and should cite the publication date and page number of this **Federal Register** notice. To ensure that comments will be considered in the scoping process, written comments must be postmarked or delivered by March 9, 2009. Electronic comments may be sent by e-mail to the NRC at *BBNP.COLEIS@nrc.gov*. Electronic submissions must be sent no later than March 9, 2009, to ensure that they will be considered in the scoping process. Comments will be made available electronically and will be accessible through the NRC's Electronic Reading Room link *http://www.nrc.gov/reading-rm/adams.html*. The NRC staff may, at its discretion, consider comments after the end of the comment period.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. A notice of a hearing and opportunity to petition for leave to intervene in the proceeding on the application for COL will be published in a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination

and conclusions reached on the scope of the environmental review including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from either Mrs. Stacey Imboden at the U.S. Nuclear Regulatory Commission, Mail Stop T–6D38M, Washington, DC 20555–0001, by phone at 301–415–2462, or by e-mail at *Stacey.Imboden@nrc.gov* and/or Ms. Tomeka Terry at the U.S. Nuclear Regulatory Commission, Mail Stop T–6D38M, Washington, DC 20555–0001, by phone at 301–415–1488, or by e-mail at *Tomeka.Terry@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of December 2008.

For the Nuclear Regulatory Commission.

Nilesh Chokshi,

Deputy Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–31420 Filed 1–5–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 5, 12, 19, 26, February 2, 9, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 5, 2009

There are no meetings scheduled for the week of January 5, 2009.

Week of January 12, 2009—Tentative

There are no meetings scheduled for the week of January 12, 2009.

Week of January 19, 2009—Tentative

There are no meetings scheduled for the week of January 19, 2009.

Week of January 26, 2009—Tentative

There are no meetings scheduled for the week of January 26, 2009.

Week of February 2, 2009—Tentative

There are no meetings scheduled for the week of February 2, 2009.

Week of February 9, 2009—Tentative

There are no meetings scheduled for the week of February 9, 2009.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: December 31, 2008.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–32 Filed 1–2–09; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the Dominican Republic-Central America-United States Free Trade Agreement for Costa Rica

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Maria Pagan, Associate General Counsel, Office of the United States Trade Representative, (202) 395–9626.

On August 5, 2004, the United States and Costa Rica entered into the Dominican Republic-Central America-United States Free Trade Agreement (''the CAFTA–DR''). Chapter 9 of the CAFTA–DR sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9.1.2(b)(i) of the CAFTA–DR.

The United States approved the CAFTA–DR through the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''the CAFTA–DR Act'') (Pub. L. No. 109–53, 119 Stat. 462) (19 U.S.C. 4001 et seq.). The CAFTA–DR entered into force for Costa Rica on January 1, 2009.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the CAFTA–DR, do hereby determine that:

1. Costa Rica is a country, other than a major industrialized country, which, pursuant to the CAFTA–DR, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Costa Rica is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Costa Rica (i.e., goods and services covered by the Schedules of the United States in Annex 9.1.2(b)(i) of the CAFTA–DR) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Costa Rica, this waiver shall be applied by all entities listed in the Schedules of the United States in Section A of Annex 9.1.2.(b)(i) and in List A of Section B of Annex 9.1.2(b)(i) of the CAFTA–DR.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 30, 2008.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–31406 Filed 1–5–09; 8:45 am]

BILLING CODE 3190–W9–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2008; Order No. 161]

FY 2008 Annual Compliance Report; Comment Request

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket for consideration of the Postal Service's compliance with statutory provisions pertaining to costs, revenues, rates, and quality of service. The Postal Service's recently-filed FY 2008 report forms the basis for consideration. The public is invited to comment.

DATES: Comments are due January 30, 2009. Reply comments are due February 13, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: Section 3652 of title 39 of the United States Code requires the Postal Service to file a report with the Postal Regulatory Commission on the costs, revenues, rates, and quality of service associated with its products within 90 days after the close of each fiscal year. That section requires that the Postal Service's annual report be sufficiently detailed to allow the Commission and the public to determine whether the rates charged and the service provided comply with all of the requirements of title 39. *See* 39 U.S.C. 3652(a)(1) and (e)(1)(A). The Postal Service filed its annual compliance report for FY 2008 with the Commission on December 29, 2008. Appended to it are four major sets of data: (1) The Cost and Revenue Analysis (CRA); (2) the International Cost and Revenue Analysis (ICRA); (3) the models of costs avoided by worksharing; and (4) billing determinant information.[1]

After receiving the FY 2008 ACR, the Commission is required under 39 U.S.C. 3653 to provide an opportunity to comment to the interested public and an officer of the Commission to represent the interests of the general public. A public representative (officer of the Commission) will be designated in a subsequent notice to be issued in the near future. The Commission hereby solicits public comment on the degree to which the Postal Service's operations and financial results comply with the policies of title 39. Comments by interested persons are due on or before January 30, 2009. Reply comments are due on or before February 13, 2009. After completing its review of the FY 2008 ACR, public comments, and any other information submitted in this proceeding, the Commission will issue an Annual Compliance Determination (ACD).

The Commission is aware that the comment periods in annual compliance report proceedings are brief when one considers the complexity of the issues involved. However, the statute affords the Commission 90 days to digest the report filed by the Postal Service and evaluate the Postal Service's compliance with the broad range of policies articulated in title 39. Expediting public comment is essential if the Commission is to have sufficient time to take the public's concerns into account in making its evaluation.

This is the second compliance report filed by the Postal Service since passage of the Postal Accountability and Enhancement Act (PAEA) of 2006. The first compliance report was filed on December 28, 2007, and covered FY 2007. FY 2007 was a transitional period during which the rate-setting criteria of the former Postal Reorganization Act (PRA) remained in force. The fact that FY 2007 was a transitional period presented the Postal Service with a difficult task.[2] The Commission therefore reviewed the Postal Service's rates and service under the standards of the PAEA with due regard for the ''unique and non-recurring factors'' confronted by the Postal Service and with appreciation for ''the good faith effort of the Postal Service to provide useful available information. * * * *Id.* The Commission stated that ''[i]n future years, when the Postal Service has the benefit of * * * rules [keyed to the evaluation of the PAEA's standards], a more rigorous level of scrutiny will be more justifiable.'' *Id.*

The Postal Service states that although the transition issues are ''less acute'' this year, some still remain. As an example, the Postal Service points to the fact that the lists of market dominant and competitive products in the Mail Classification Schedule were not finalized until after the start of FY 2008. Moreover, the Postal Service notes that final rules governing the form and content of the annual compliance report have not yet been issued.[3]

Among the materials submitted by the Postal Service as part of its filing is a document identified as USPS–FY08–9 which serves as a roadmap summarizing other materials submitted as part of the FY 2008 ACR and discussing changes in methodologies from the Commission's methodologies in the FY 2007 ACD.

The Postal Service states that the major sets of materials and the formats in which they are presented should be familiar to the Commission and those persons who have participated in earlier postal rate proceedings. The one

[1] United States Postal Service FY 2008 Annual Compliance Report, December 29, 2008 (FY 2008 ACR). Public portions of the Postal Service's filing are available at the Commission's Web site, *http://www.prc.gov.*

[2] Included among the difficulties faced by the Postal Service was the fact that it ''[did] not have experience producing annual cost, revenue, and volume figures so quickly after the close of the fiscal year.'' FY 2007 ACD at 9. In addition, many of the Postal Service's products ''did not have service standards and service measurement procedures in effect during FY 2007.'' *Id.* at 8. The rates that were charged during FY 2007 were also established under similar, but different, policies of the PRA. *Id.*

[3] On August 28, 2008, the Commission instituted a rulemaking proceeding in which it proposed periodic reporting rules to implement all of the PAEA's provisions intended to make the Postal Service's operations and finances transparent and accountable. Docket No. RM2008–4, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports, August 22, 2008. The Commission is reviewing the initial and reply comments submitted in that proceeding.

significant change is that certain materials previously presented in one version containing both market dominant and competitive product information have been split into public and non-public versions.[4]

In general, most of the analytical methods employed in producing the FY 2008 ACR appear to be consistent with established precedent or have been approved by the Commission.[5] A discussion of methodology changes can be found in Section Two of the roadmap document, USPS–FY08–9, and in the preface that accompanies each of the FY 2008 ACR's appended materials.

Section 3652(g) of title 39 requires that the Comprehensive Statement of Postal Operations (Comprehensive Statement) mandated by 39 U.S.C. 2401(e) be included in the Postal Service's annual compliance report. The Postal Service indicates that its FY 2008 Comprehensive Statement is currently available on the Postal Service's Web site at *http://www.usps.com/strategicplanning/cs08/cs2008.pdf*.[6]

It is Ordered:

1. The Commission establishes Docket No. ACR2008 to consider matters raised by the Postal Service's FY 2008 Annual Compliance Report.

2. Public comments on the United States Postal Service FY 2008 Annual Compliance Report are due on or before January 30, 2009.

3. Reply comments on the United States Postal Service FY 2008 Annual Compliance Report are due on or before February 13, 2009.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–31413 Filed 1–5–09; 8:45 am]

BILLING CODE 7710–FW–P

[4] Part V of the FY 2008 ACR identifies the materials that it has included in the non-public annex to its filing and the rationale for its actions.

[5] Subsequent to the issuance of the Commission's FY 2007 ACD, the Postal Service submitted 13 proposals for change to the costing methodologies for the FY 2008 ACR. Twelve of these 13 proposals have been addressed by the Commission in the following orders: Order No. 115, Order Accepting Certain Analytical Principles For Use in the Postal Service's Periodic Reports, October 18, 2008 (addressing Proposals One through Ten); Order No. 118, Order Concerning Costing Methods Used in Periodic Reporting (Proposals Ten And Eleven), October 22, 2008; and Order No. 156, Order Concerning Costing Methods Used in Periodic Reporting (Proposal Thirteen), December 23, 2008. Proposal Twelve is still being considered by the Commission in Docket No. RM2009–1.

[6] Notice of the United States Postal Service Regarding the FY 2008 Comprehensive Statement, December 30, 2008.

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 6e–2 and Form N–6EI–1; SEC File No. 270–177; OMB Control No. 3235–0177.

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 discussed below.

Rule 6e–2 (17 CFR 270.6e–2) under the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a) is an exemptive rule that permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N–6EI–1 (17 CFR 274.301), a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to rule 6e–2.

Since 2005, there have been no filings under paragraph (b)(9) of rule 6e–2 by management accounts. Therefore, since 2005, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of rule 6e–2. In addition, there have been no filings of Form N–6EI–1 by separate accounts since 2005. Therefore, there has been no cost or burden to the industry since that time. The Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

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.

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 send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31345 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–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:

Form 24F–2; SEC File No. 270–399 ; OMB Control No. 3235–0456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires any open-end management companies (''mutual funds''), unit investment trusts (''UITs'') or face-amount certificate companies

(collectively, ''funds'') deemed to have registered an indefinite amount of securities to file, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 5707 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be two hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 11,414 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 of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. 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.

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 send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31353 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–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:

Form NP–X; SEC File No. 270–524; OMB Control No. 3235–0582.

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 discussed below.

The title of the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 requires every registered management investment company, other than a small business investment company (''Fund''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30. Funds also use Form N–PX to inform the Commission that certain of their portfolios do not hold any equity securities and have no proxy record to file.

The Commission requires the dissemination of this information in order to meet the filing and disclosure requirements of the Investment Company Act and to enable Funds to provide investors with the information necessary to evaluate an investment in the Fund. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. Requiring a Fund to file its annual reports on Form N–PX has the advantages of making each Fund's proxy voting record available within a relatively short period of time after the proxy voting season, and of providing disclosure of all Funds' proxy voting records over a uniform period of time.

There are approximately 3,800 Funds registered with the Commission, representing approximately 9,400 Fund portfolios, which are required to file Form N-PX.[1] The 9,400 portfolios are comprised of 6,200 portfolios holding equity securities and 3,200 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 14.4 hours per response. The overall estimated annual burden is therefore 89,824 hours ((6,200 responses × 14.4 hours per response for equity holding portfolios) + (3,200 responses × 0.17 hours per response for non-equity holding portfolios)).

Form N–PX does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

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 send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31354 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–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:

Regulation BTR; OMB Control No. 3235–0579; SEC File No. 270–521.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities

[1] The estimate of 3,800 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 2,400 bond Funds that hold no equity securities, and 800 money market Funds, for a total of 9,400 portfolios required to file Form N–PX.

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.

Regulation Blackout Trade Restriction (''Regulation BTR'') (17 CFR 245.100–245.104) clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act'') (15 U.S.C. 7244(a)). Section 306(a)(6) (15 U.S.C. 7244(a)(6)) of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1) (15 U.S.C. 7244(a)(1)). The information provided under Regulation BTR is mandatory and is available to the public. Approximately 1,230 issuers file Regulation BTR notices annually. We estimate that it takes 2 hours per response for an issuer to draft a notice to directors and executive officers for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting burden of (1,230 × 2 hrs × .75) 1,845 hours. In addition, we estimate that an issuer distributes a notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (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 send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31356 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–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:

Regulation G; OMB Control No. 3235–0576; SEC File No. 270–518.

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 discussed below.

Regulation G (17 CFR 244.100—244.102) under the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) requires registrants that publicly disclose material information that includes a non-GAAP financial measure to provide a reconciliation to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261; 78m). The information provided under Regulation G is mandatory and is available to the public. We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately .5 hours per response (84,000 × .5 hours) for a total reporting burden of 42,000 hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (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 send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31357 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–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 15c2–7; OMB Control No. 3235–0479; SEC File No. 270–420.

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 15c2–7 (17 CFR 240.15c2–7).

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When Rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 5,808 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that number as the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation

system, such as the OTC Bulletin Board (''OTCBB'') or the Pink Sheets, operated by Pink OTC Markets, Inc. According to representatives of both Pink Sheets and the OTCBB, neither entity has recently received, or anticipates receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (×) 45 seconds/notice). The Commission estimates that a typical employee of a broker-dealer charged to ensure compliance with Commission regulations receives annual compensation of $128,960. This compensation is the equivalent of $62.00 per hour ($128,960 divided by 2,080 payroll hours per year). Thus, the Commission estimates that the annual cost burden of compliance with Rule 15c2–7 is $0.78 ($62.00/hour multiplied by 0.0125 hours).

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: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, 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 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31358 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28574; 812–13499]

Franklin Templeton Fund Allocator Series, et al.; Notice of Application

December 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end investment companies in the same group of investment companies to enter into a special servicing agreement (''Special Servicing Agreement'').

APPLICANTS: Franklin Templeton Fund Allocator Series, Franklin Capital Growth Fund, Franklin Gold and Precious Metals Fund, Franklin Custodian Funds, Franklin Value Investors Trust, Franklin Mutual Series Funds, Templeton China World Fund, Templeton Developing Markets Trust, Templeton Funds, Franklin Templeton International Trust, Templeton Global Smaller Companies Fund, Franklin High Income Trust, Franklin Investors Securities Trust, Franklin Real Estate Securities Trust, Franklin Strategic Series, Franklin Strategic Mortgage Portfolio, Franklin Templeton Global Trust, Templeton Income Trust, Franklin Global Trust, Templeton Growth Fund, Inc., Institutional Fiduciary Trust (each, a ''Franklin Templeton Fund'' and collectively, the ''Franklin Templeton Funds''), Franklin Advisers, Inc. (''Franklin Advisers''), Franklin Templeton Institutional, LLC, Franklin Templeton Investments Corp., Franklin Investment Advisory Services, LLC, Franklin Advisory Services, LLC, Franklin Mutual Advisers, LLC, Templeton Asset Management Ltd., Templeton Global Advisors Limited, Templeton Investment Counsel, LLC, Franklin Templeton Investment Management Limited (the ''Underlying Fund Advisers'' and, together with Franklin Advisers, the ''Advisers''), Franklin/Templeton Distributors, Inc. (''FTD''), Franklin Templeton Services, LLC (''FTS''), and each existing or future registered open-end management investment company or series thereof that is part of the same ''group of investment companies'' as the Franklin Templeton Funds under section 12(d)(1)(G)(ii) of the Act and (i) is advised by Franklin Advisers or any entity controlling, controlled by, or under common control with Franklin Advisers, or (ii) for which FTD or any entity controlling, controlled by, or under common control with FTD serves as principal underwriter (such investment companies or series thereof, together with the Franklin Templeton Funds and their series, the ''Funds'').[1]

FILING DATES: The application was filed on February 25, 2008, and amended on December 19, 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 23, 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, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, 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 Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1520, telephone (202) 551–5850.

Applicants' Representations

1. The Advisers are investment advisers registered under the Investment Advisers Act of 1940 and are under common control of Franklin Resources, Inc. Franklin Advisers provides investment management and related administrative services to the Top-Tier Funds (as defined below) and certain of the Underlying Funds (as defined below). The Underlying Fund Advisers

[1] All entities that currently intend to rely on the order have been named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

serve as investment advisers to the remaining Underlying Funds. FTD is registered as a broker-dealer under the Securities Exchange Act of 1934 and serves as distributor of the Funds. FTS provides certain administrative services and facilities for the Funds.[2]

2. The Franklin Templeton Funds are registered under the Act as open-end management investment companies. The Franklin Templeton Funds currently offer multiple series, 10 of which are ''Top-Tier Funds'' [3] and 33 of which are ''Underlying Funds.'' [4] The Top-Tier Funds will invest substantially all of their assets in the Underlying Funds.[5] The Top-Tier Funds and certain of the Underlying Funds currently offer multiple classes of shares in reliance on rule 18f–3 under the Act.

3. The Advisers and the Funds propose to enter into a Special Servicing Agreement that would allow an Underlying Fund to bear the expenses of a Top-Tier Fund (other than management fees, fund-level administrative service fees,[6] rule 12b–1 fees and class-specific administrative service fees). Under the Special Servicing Agreement, each Underlying Fund will bear expenses of a Top-Tier Fund in proportion to the estimated benefits to the Underlying Fund arising from the investment in the Underlying Fund by the Top-Tier Fund (''Underlying Fund Benefits'').

4. Applicants state that the Underlying Fund Benefits are expected to result primarily from the incremental increase in assets resulting from investments in the Underlying Funds by the Top-Tier Funds and the large asset size of each shareholder account that represents an investment by a Top-Tier Fund relative to other shareholder accounts. A shareholder account that represents a Top-Tier Fund will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts. As a result, the shareholder servicing costs to any Underlying Fund for servicing one account registered to a Top-Tier Fund will be significantly less than the cost to that same Underlying Fund of servicing the same pool of assets contributed by a large group of shareholders owning relatively small accounts in one or more Underlying Funds. In addition, by reducing Top-Tier Fund expenses, the Special Servicing Agreement may lead to increased assets being invested in the Top-Tier Funds, which in turn would lead to increased assets being invested in the Underlying Funds, which could enable the Underlying Funds to control and reduce their expense ratios because their operating expenses will be spread over a larger asset base.

5. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Fund and the fees for those services charged to the Top-Tier Fund that may be paid by the Underlying Fund (''Underlying Fund Payments''); (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments, except for bona fide transfer agent services approved by the board of trustees (''Board'') of the Underlying Fund, including a majority of trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''); (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including sub-accounting expenses and other out-of-pocket expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including sub-accounting expenses and other out-of-pocket expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act provide that an affiliated person of, or a principal underwriter for, a registered investment company, or an affiliate of such person or principal underwriter, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. As investment advisers to the Funds, the Advisers are affiliated persons of each of the Underlying Funds and Top-Tier Funds, which in turn could be deemed to be under common control of the Advisers and therefore affiliated persons of each other. The Top-Tier Funds and the Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund's ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and the Advisers.

2. Rule 17d–1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit them to enter into the Special Servicing

[2] FTS also provides general administrative services to certain Top-Tier Funds that do not have an investment adviser. The administrative services provided include monitoring and rebalancing these Top-Tier Funds' investment in the Underlying Funds.

[3] ''Top-Tier Funds'' refers to Franklin Templeton Conservative Target Fund, Franklin Templeton Corefolio Allocation Fund, Franklin Templeton Founding Funds Allocation Fund, Franklin Templeton Growth Target Fund, Franklin Templeton Moderate Target Fund, Franklin Templeton Perspectives Allocation Fund, Franklin Templeton 2015 Retirement Target Fund, Franklin Templeton 2025 Retirement Target Fund, Franklin Templeton 2035 Retirement Target Fund and Franklin Templeton 2045 Retirement Target Fund and any other Fund that invests substantially all of its assets in the Underlying Funds (as defined below).

[4] ''Underlying Funds'' refers to Franklin Capital Growth Fund, Franklin Gold and Precious Metals Fund, Franklin Growth Fund, Franklin Income Fund, Franklin U.S. Government Securities Fund, Franklin MicroCap Value Fund, Franklin Small Cap Value Fund, Mutual Discovery Fund, Mutual European Fund, Mutual Financial Services Fund, Mutual Shares Fund, Templeton China World Fund, Templeton Developing Markets Trust, Templeton Foreign Fund, Templeton Foreign Smaller Companies Fund, Templeton Global Long-Short Fund, Templeton Global Smaller Companies Fund, Franklin High Income Fund, Franklin Floating Rate Daily Access Fund, Franklin Limited Maturity U.S. Government Securities Fund, Franklin Total Return Fund, Franklin Real Estate Securities Fund, Franklin Strategic Income Fund, Franklin Growth Opportunities Fund, Franklin Flex Cap Growth Fund, Franklin Natural Resources Fund, Franklin Small Cap Growth Fund II, Franklin Strategic Mortgage Portfolio, Franklin Templeton Hard Currency Fund, Templeton Global Bond Fund, Franklin Global Real Estate Fund, Templeton Growth Fund, Inc., Franklin Cash Reserves Fund and any other Fund.

[5] The Top-Tier Funds will not be Underlying Funds and no Top-Tier Fund will invest in another Top-Tier Fund.

[6] Fund-level administrative services are those that benefit all classes of a Fund, including, for example, coordinating daily pricing of the Fund's portfolio, providing Fund accounting, monitoring the Fund's compliance with laws and providing office space, equipment and supplies for the Fund.

Agreement. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and the Advisers in the proposed Special Servicing Agreement is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant participates on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments, except for bona fide transfer agent services approved by the Board of the Underlying Fund, including a majority of the Independent Trustees; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including sub-accounting expenses and other out-of-pocket expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including sub-accounting expenses and other out-of-pocket expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund's entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that the Advisers, any affiliated person of the Advisers, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and the Advisers and FTS will furnish, such information as may reasonably be necessary to evaluate the terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were based, for the duration of the Special Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31355 Filed 1–5–09; 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 a Closed Meeting on Thursday, January 8, 2009 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 8, 2009 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

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 31, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31450 Filed 1–5–09; 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, January 7, 2009 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will hear oral argument on an appeal by Gary M. Kornman from an initial decision of an administrative law judge barring him from associating with any broker, dealer, or investment adviser. The law judge based her decision to impose associational bars on Kornman's having been criminally convicted of making a false statement to the Commission in violation of 18 U.S.C. 1001. Issues likely to be considered include whether it is in the public interest to bar Kornman from association with any broker, dealer, or investment adviser.

Item 2: The Commission will hear oral argument on an appeal by Nature's Sunshine Products, Inc. (''Nature's Sunshine'' or the ''Company'') from an initial decision of an administrative law judge. The law judge found that Nature's Sunshine had violated Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a–1 and 13a–13 by failing to file any annual report on Form 10–K since filing its Form 10–K for the year ended December 31, 2004, and by failing to file any quarterly report on Form 10–Q with financial statements that had been reviewed by a registered independent public accounting firm since filing its Form 10–Q for the quarter ended June 30, 2005. Issues likely to be considered include whether it is necessary or appropriate for the protection of investors to revoke the registration of Nature's Sunshine's common stock.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 31, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31451 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59188; File No. SR–CBOE–2008–133]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Trades for Less Than $1

December 30, 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 December 30, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending its accommodation liquidation procedures to allow transactions to take place at a price that is below $1 per option contract. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, Accommodation Liquidations (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The purpose of this rule change is to temporarily amend the procedures through January 30, 2009 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract.[5] These lower priced transactions would be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions would only be permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures would also be made available for trading in option classes participating in the Penny Pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange notes that in certain circumstances transactions can already take place off the Exchange floor at less than $1 per option contract (*e.g.*, Exchange Rule 6.49, Transactions Off the Exchange).

Program.[6] The Exchange believes that allowing a price of at least $0 but less than $1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close out its position even at the $1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.54, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions will be exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 6.24, Required Order Information. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day. The rule change also provides that transactions for less than $1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to The Options Clearing Corporation (''OCC'') using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, Transfer of Positions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[7] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange noted that the accommodation liquidations at a contract price of less than $1 that would be permitted in open outcry under the proposal would be conducted pursuant to the same trading procedures that currently apply for $1 cabinet trades and reported for clearing pursuant to the same procedures that currently apply for position transfers. Additionally, the Exchange noted that under its current Rule 6.49, in certain circumstances transactions can take place off the Exchange floor at prices less than $1 per option contract. Therefore, the Exchange contends that allowing for an increment of less than $1 is not novel or unique.

Given the recent market conditions, the Exchange also stated it believes that market participants may wish to close their out-of-the-money options positions before the 2008 year-end, and that the contemplated changes will help to better facilitate the process. The Exchange also stated it believes that acceleration of the operative date is consistent with the protection of investors and the public interest because the proposed rule change will better facilitate the closing of options positions that are worthless or not actively trading prior to the end of 2008.

In light of the foregoing, the Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.[12] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2008–133 on the subject line.

[6] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the instant rule change would allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures would be made available for all classes, including those classes participating in the Penny Pilot Program.

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–133. 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 No. SR–CBOE–2008–133 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31390 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59171; File No. SR–ISE–2008–9]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 29, 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 December 23, 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on one Premium Product.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on the NASDAQ Q–50 Index (''NXTQ'').[4] All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on NXTQ.[5] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[6] and $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[7] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[8]

Additionally, the Exchange has entered into a license agreement with The NASDAQ OMX Group, Inc. in connection with the listing and trading of options on NXTQ. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of two (2) cents per contract for trading in options on NXTQ. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, ISE Market Maker, non-ISE Market Maker & Firm Proprietary orders) and Linkage Orders. Finally, since options on NXTQ are not multiply-listed, the Payment for Order Flow fee shall not apply. The Exchange believes the proposed rule change will further ISE's goal of introducing new products to the marketplace that are competitively priced.

2. *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[4] The Exchange represents that NXTQ is eligible for options trading because it meets the standards of ISE Rule 2002(d), which allows the ISE to begin trading this product by filing Form 19b–4(e) at least five business days after commencement of trading pursuant to Rule 19b–4(e) of the Act.

[5] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[6] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[7] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[8] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 per contract.

Act,[9] in general, and furthers the objectives of section 6(b)(4),[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2008–98 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–ISE–2008–98. 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 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–2008–98 and should be submitted by January 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31351 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59168; File No. SR–NYSE–2008–139]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 48.10 To Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange to Declare an Extreme Market Volatility Condition and Suspend Certain NYSE Requirements Relating to the Closing of Securities at the Exchange

December 29, 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 23, 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 amend New York Stock Exchange (''NYSE'' or the ''Exchange'') Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain NYSE requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at *http://www.nyse.com,* 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.

On October 2, 2008, the Exchange filed for immediate effectiveness to amend NYSE Rule 48 to provide the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.[4] The Exchange amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the NYSE would like to adopt the closing provisions on a permanent basis, such proposal must be filed under Section 19(b)(2) of the Act.[5]

The Exchange intends soon to file a rule proposal to amend Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C (the ''Rule 48/123C filing''). That rule proposal would be filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'').[6] The Exchange now proposes to temporarily extend the NYSE Alternext Equities Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that the provisions of that rule relating to declaring an extreme market volatility condition at the close will end on March 27, 2009.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to extend without interruption the provisions of Rule 48 regarding the Exchange's ability to declare an extreme market volatility condition at the close and suspend certain rules relating to closing of securities on the Exchange. These provisions are currently scheduled to expire on December 31, 2008. The Commission notes the Exchange's representation that it soon intends to file a proposal to establish permanent rules regarding closing of securities subject to an extreme order imbalance at the close. In light of the foregoing, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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–2008–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–139. 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

[4] *See* SEC Release No. 34–58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR–NYSE–2008–102).

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–139 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31348 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59169; File No. SR–NYSEALTR–2008–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending NYSE Alternext US, LLC Equities Rule 48.10 To Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange To Declare an Extreme Market Volatility Condition and Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

December 29, 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 24, 2008, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') 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 amend NYSE Alternext US, LLC (''NYSE Alternext'' or the ''Exchange'') Equities Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain Exchange requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at *http://www.nyse.com*, NYSE Alternext, 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 amend NYSE Alternext Equities Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.

On November 26, 2008, NYSE Alternext filed a rule proposal to conform its rules to those of the New York Stock Exchange LLC (''NYSE'').[4] Among the rules amended in that filing was Rule 48, which was previously amended by the NYSE. On October 2, 2008, the NYSE filed for immediate effectiveness to amend NYSE Rule 48 to provide the NYSE with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.[5] The NYSE amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the NYSE would like to adopt the closing provisions on a permanent basis, such proposal must be filed under Section 19(b)(2) of the Act.[6]

The Exchange intends soon to file a rule proposal to amend NYSE Alternext Equities Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C (the ''Rule 48/123C filing''). That rule proposal would be filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'').[7] The Exchange now proposes to temporarily extend the NYSE Alternext Equities Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that the provisions of that rule relating to declaring an extreme market volatility condition at the close will end on March 27, 2009.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[8] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any

[14] 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. 34–59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10).

[5] *See* SEC Release No. 34–58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR–NYSE–2008–102).

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(5).

significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Alternext requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to extend without interruption the provisions of Rule 48 regarding the Exchange's ability to declare an extreme market volatility condition at the close and suspend certain rules relating to closing of securities on the Exchange. These provisions are currently scheduled to expire on December 31, 2008. The Commission notes the Exchange's representation that it soon intends to file a proposal to establish permanent rules regarding closing of securities subject to an extreme order imbalance at the close. In light of the foregoing, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(C).

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–NYSEALTR–2008–18 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–NYSEALTR–2008–18. 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–NYSEALTR–2008–18 and should be submitted on or before January 27, 2009.

[15] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31349 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59170; File No. SR–NYSEALTR–2008–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC To Amend Certain Regulatory Fees Applicable to Its Member Organizations

December 29, 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 December 24, 2008, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

NYSE Alternext proposes to (i) continue to waive registered representative fees for New York Stock Exchange (''NYSE'') member organizations that automatically became NYSE Alternext member organizations by operation of NYSE Alternext Equities Rule 2, and (ii) revise the examination fees payable by member organizations for which the Exchange is the Designated Examining Authority (''DEA''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

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. NYSE Alternext 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

In connection with the acquisition of the American Stock Exchange (renamed NYSE Alternext US at the time of the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the ''NYSE Alternext Trading Systems''), which are operated by the NYSE on behalf of NYSE Alternext (the ''Equities Relocation''). At the time of the Equities Relocation, by operation of NYSE Alternext Equities Rule 2, all NYSE member organizations automatically became NYSE Alternext member organizations. By acquiring NYSE Alternext membership, the NYSE member organizations that were not previously NYSE Alternext members would become subject to the NYSE Alternext registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Alternext business prior to the Equities Relocation became NYSE Alternext members without any action on their own part, NYSE Alternext waived the application of its registered representative fees to those firms for the month of December. At that time, NYSE Alternext stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.[3] NYSE Alternext has not yet determined how best to revise its registration fees in light of the accession to NYSE Alternext membership of these NYSE member organizations. As such, NYSE Alternext believes that it is appropriate to continue for the present its waiver of registered representative fees payable by member organizations which acquired their membership automatically in connection with the Equities Relocation. NYSE Alternext will submit a filing to the Commission at such time as it wishes to end this waiver. In any event, the current waiver will end by its terms on June 30, 2009, so NYSE Alternext must submit a filing on or prior to that date to either adopt a new fee approach or to further extend the term of the waiver.

NYSE Alternext also proposes to revise its fees payable by member organizations for which the Exchange is the DEA. Currently, this fee is set at $0.00040 per dollar of gross revenue subject reported on FOCUS Report Form X–17A–5, subject to a minimum quarterly payment of (i) $250 for member organizations not in engaged in public business and (ii) $750 for member organizations that are engaged in public business. Going forward, for purposes of establishing minimum DEA fees, the Exchange will no longer distinguish among member organizations on the basis of whether they are engaged in public business and will instead categorize them based on whether or not they are clearing firms. The minimum fee for non-clearing firms will be a monthly fee of $275 ($825 per quarter) and the minimum fee for clearing firms will be a monthly fee of $1,000 ($3,000 per quarter). The Exchange is also eliminating the provision that member organizations operating additional entities subject to the minimum fees are subject to 50% of these minimum fees for each additional entity. As a consequence, these additional entities will be subject to the full minimum fee going forward. The Exchange is not making any change to the $0.00040 per dollar of gross revenue charge. The revisions proposed in this filing make the Exchange's DEA fees identical to those charged by the Chicago Board Options Exchange (''CBOE'') and more reflective of the costs the Exchange incurs in connection with its role as DEA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as (i) the same DEA fees will be charged to all member organizations and (ii) the waiver of registered representative fees applies only to firms that became Alternext member organizations automatically without any action on their part and in spite of the fact that they did not conduct any Alternext business.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(2)[6] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEALTR–2008–19 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–NYSEALTR–2008–19. This file number should be included on the subject line if e-mail is used. To help the

[3] *See* Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR–NYSEALTR–2008–09).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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–NYSEALTR–2008–19 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31350 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59161; File No. SR–NYSEArca–2008–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

December 24, 2008.

I. Introduction

On November 3, 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 to amend its Schedule of Fees and Charges for Exchange Services (''Schedule of Fees''). The proposed rule change was published for comment in the **Federal Register** on November 24, 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

The Exchange has proposed to amend its Schedule of Fees to charge the same amount for Principal Orders (''P Orders'') and Principal Acting As Agent Orders (''P/A Orders'') (collectively, ''Linkage Orders'') in foreign currency options (''FCO'') as they currently charge for Linkage orders in issues included in the Penny Pilot. The Exchange recently amended its rules to enable the Exchange to list and trade FCOs.[4] These rules permit FCOs to be quoted and traded in one cent increments. Presently, the Exchange charges $0.45 for all electronically executed Linkage Orders in Penny Pilot issues.[5] The Exchange is proposing to similarly charge $0.45 for all electronically executed Linkage Orders in FCOs.

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to amend its Schedule of Fees and Charges for Exchange Services is consistent with 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)(4) of the Act,[7] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Schedule of Fees, NYSE Arca charges electronically executed FCO orders the fee rate of $.50 for Linkage Orders submitted through the Options Linkage. The Exchange proposed to lower the charge to $.45 for all electronically executed Linkage Orders in FCOs.

The Commission notes that the $.45 fee rate for electronically executed FCOs orders that take liquidity has been in place in the non-Linkage context since October 2008.[8] In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

For the foregoing reasons, the Commission believes that the proposal to amend the fees the Exchange charges for Linkage Orders in FCOs is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSEArca–2008–118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31346 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59167; File No. SR–NYSEArca–2008–141]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Implementing Fee Change

December 29, 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 22, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[7] 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. 58945 (November 13, 2008), 73 FR 71072.

[4] *See* Securities Exchange Act Release No. 58800 (October 16, 2008), 73 FR 63539 (October 24, 2008) (SR–NYSEArca–2008–109).

[5] The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. *See* Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

[6] 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).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 58875 (October 29, 2008), 73 FR 65916 (November 5, 2008) (SR–NYSEArca–2008–117).

[9] 15 U.S.C. 78s(b)(2).

[10] 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the Options Orientation Fee. The text of the proposed rule change is attached to the proposed rule change as Exhibit 5. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently charges an Options Orientation Fee of $1,000 to each applicant seeking to become a Market Maker Authorized Trader [4] (''MMAT'') or Floor Broker [5] (''FB'') on the Exchange. The Exchange proposes to reduce the Options Orientation Fee from $1,000 to $500.

Pursuant to Exchange rules, each MMAT and FB must be approved by the Exchange. The approval process requires each applicant to file a Form U–4 and fingerprint cards in Web CRD. The Exchange then performs a full background investigation and disclosure review of each applicant. Each applicant must also demonstrate their qualification for registration by successfully completing the Series 44 or Series 45 examination. The Options Orientation Fee is designed to cover the cost of processing each application, including the background investigation, disclosure review, fingerprinting fees, and the administration and maintenance costs associated with the Series 44 and Series 45 exams.

NYSE Arca has recently been able to reduce the fixed costs associated with administering and maintaining the Series 44 and Series 45 exams. The Exchange believes it is appropriate to pass along those savings to applicants taking either of the two exams. As such, the Exchange proposes reducing the Options Orientation Fee from $1,000 to $500. In doing so the Exchange also believes it can attract additional market makers and floor brokers, thereby increasing participation and liquidity on the Exchange.

The new Options Orientation Fee would become effective on January 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[6] in general, and section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–141 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–141. 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 will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–141 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31347 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* NYSE Arca Rule 6.1A(9).

[5] *See* NYSE Arca Rule 6.43.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59173; File No. SR–NYSEArca–2008–125]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing of Units of the United States Short Oil Fund

December 29, 2008.

On November 18, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade units (''Units'') of the United States Short Oil Fund, LP (''USSO'' or ''Partnership''). The proposed rule change was published in the **Federal Register** on December 1, 2008 for a 15-day comment period.[3] The Commission received no comments on the proposal. On December 29, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order provides notice of the filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

I. Description of the Proposal

NYSE Arca, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade the Units of USSO pursuant to NYSE Arca Equities Rule 8.300, which governs the trading of Partnership Units.[5] USSO, a Delaware limited partnership, is managed and controlled by United States Commodity Funds LLC (''General Partner''), a single member limited liability company that is (1) registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and (2) a member of the National Futures Association. The General Partner is not affiliated with a broker-dealer. USSO will comply with the requirements of Rule 10A–3 under the Act[6] as it applies to limited partnerships.

The investment objective of USSO is to have the changes in percentage terms of the Units' net asset value (''NAV'') inversely reflect the changes in percentage terms of the spot price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the price of the futures contract on light, sweet crude oil as traded on the New York Mercantile Exchange (''NYMEX''). The futures contract employed is the near month expiration contract, except when the near month contract is within two weeks of expiration, in which case the futures contract will be the next month contract to expire (''Benchmark Futures Contract''), less USSO's expenses.[7] In pursuing this objective, the primary focus of the General Partner will be taking short positions in futures contracts[8] and the management of investments in short-term obligations of the United States of two years or less (''Treasuries''), and cash and/or cash equivalents for margining purposes and as collateral.

Additional information about USSO, including its investing strategy and holdings, Basket Amount calculation, creations and redemptions of Units, dissemination and availability of information, trading rules, trading halts, surveillance, and information bulletin, among other things, is contained in the Notice and the Registration Statement.[9]

II. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to list and trade the Units pursuant to NYSE Arca Equities Rule 8.300. NYSE Arca represents that the Units satisfy the applicable requirements of Rule 8.300, which includes initial and continued listing criteria.[13]

The Commission believes that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the CTA. The value of the underlying benchmark investment, commodity, or asset of the Units (the price information for applicable Futures Contracts) will be calculated and available on a real-time basis at least every 15 seconds between 10 a.m. and 2:30 p.m. Eastern Time (''ET''), the normal NYMEX trading hours for the Futures Contracts.[15]

In addition, USSO's total portfolio composition will be disclosed each business day that the NYSE Arca is open for trading on USSO's Web site, which is publicly accessible at no charge. This disclosure will include, as applicable, the name and value of each Crude Oil Interest, the specific types of Other Crude Oil-Related Investments and characteristics of such Other Crude Oil-Related Investments, Treasuries, and the amount of cash and cash equivalents

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58994 (November 21, 2008), 73 FR 72892 (''Notice'').

[4] In Amendment No. 1, NYSE Arca: (1) Represented that the Units satisfy the requirements of NYSE Arca Equities Rule 8.300 and thereby qualify for listing on the Exchange; (2) designated the Futures Contracts (as defined herein) as the sole underlying benchmark investment, commodity, or asset for purposes of NYSE Arca Equities Rule 8.300(d)(2)(ii); and (3) clarified that price information for the Futures Contracts is calculated or available on at least a 15-second delayed basis.

[5] USSO has filed with the Commission Amendment No. 1 to Form S–1, dated September 29, 2008 (File No. 333–152386) (''Registration Statement'').

[6] 17 CFR 240.10A–3.

[7] The Benchmark Futures Contract will be changed or ''rolled'' from the near month contract to expire to the next month contract to expire during one day.

[8] The net assets of USSO will consist primarily of short positions in futures contracts for crude oil, heating oil, gasoline, natural gas, and other petroleum-based fuels that are traded on NYMEX, ICE Futures, or other U.S. and foreign exchanges (collectively, ''Futures Contracts''). USSO may also take short positions in other crude oil-related investments such as cash-settled options on Futures Contracts, forward contracts for crude oil, and over-the-counter transactions that are based on the price of crude oil and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, ''Other Crude Oil-Related Investments'').

[9] *See supra* notes 3 and 5. Terms referred to, but not defined herein, have the same meaning set forth in the Notice.

[10] 15 U.S.C. 78f.

[11] 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).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 4.

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] *See supra* note 4.

held in USSO's portfolio. NYSE Arca will calculate and disseminate through the facilities of CTA/CQ High Speed Lines an IPV, on a per Unit basis, updated every 15 seconds between 10 a.m. and 2:30 p.m. ET.[16] Additionally, the IPV will be published on the NYSE Arca's Web site and will be available through on-line information services such as Bloomberg and Reuters.

Lastly, the Administrator will calculate NAV once each trading day and the NAV for a particular trading day will be released after 4 p.m. ET. The Administrator will calculate NAV as of the earlier of the close of the New York Stock Exchange or 4 p.m. ET. USSO will use the NYMEX closing price (determined at the earlier of the close of that Exchange or 2:30 p.m. ET) for the contracts held on NYMEX, but will calculate or determine the value of all other USSO investments as of the earlier of the close of the NYSE Arca Core Trading Session or 4 p.m. ET.

The Commission also believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. NYSE Arca Equities Rule 8.300(d)(2)(ii) provides that NYSE Arca Equities will consider removing from listing Partnership Units if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at a least a 15-second delayed basis or NYSE Arca Equities stops providing a hyperlink on its Web site to any such investment, commodity or asset value. In addition, if the value of the underlying benchmark investment, commodity or asset or IPV applicable to the Units is not being disseminated as required, the Exchange may halt trading in the Units during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. Further, if the portfolio composition applicable to the Units (disseminated via USSO's Web site) is not disseminated to all market participants at the same time, the Exchange will halt trading in the affected Units. Moreover, NYSE Arca Equities Rule 8.300(e) limits certain dealings and trading activity of ETP Holders acting as registered Market Makers in Units, prescribes various recordkeeping and disclosure requirements for ETP Holders, and prohibits the use of any material non-public information regarding trading in the underlying physical asset or commodity, futures or options on futures, or any other related derivatives.

The Commission further believes that the trading rules and procedures to which the Units will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Units are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Units satisfy the requirements of NYSE Arca Equities Rule 8.300, which includes the initial and continued listing criteria for Partnership Units.[17]

2. The Exchange's surveillance procedures are adequate to properly monitor trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

3. The Exchange will distribute an Information Bulletin, the contents of which are more fully described in the Notice, to ETP Holders in connection with the trading of the Units.

4. USSO will comply with the requirements of Rule 10A–3 under the Act[18] as it applies to limited partnerships.

This order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that it has previously approved the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Partnership Units that are similar to the Units.[20] The Commission also notes that it has previously approved the listing and trading of certain funds that are based on underlying commodity or currency benchmarks that seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the underlying benchmark or twice the inverse (−200%) of the daily performance of the underlying benchmark.[21] No comments were received on the proposed rule change during the 15-day comment period, and the Commission believes that the Exchange's proposal to list and trade the Units, as modified by Amendment No. 1 thereto, does not present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

[16] *See* Notice *supra* note 3, 73 FR at 72896, n.16, and accompanying text.

[17] *See supra* note 4.

[18] 17 CFR 240.10A–3.

[19] 15 U.S.C. 78s(b)(2).

[20] *See, e.g.*, Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (approving the listing of units of the United States Oil Fund, LP); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR–Amex–2007–98) (approving the listing of units of the United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund, LP); 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (approving the listing of units of the United States Natural Gas Fund, LP); and 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR–Amex–2007–70) (approving the listing of units of the United States Heating Oil Fund, LP and United States Gasoline Fund, LP). *See also, e.g.*, Securities Exchange Act Release Nos. 56832 (November 21, 2007), 72 FR 67328 (November 28, 2007) (SR–NYSEArca–2007–102) (approving the trading of units of the United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund, LP pursuant to UTP); 56042 (July 11, 2007), 72 FR 39118 (July 17, 2007) (SR–NYSEArca–2007–45) (approving the trading of units of the United States Natural Gas Fund, LP pursuant to UTP); and 57294 (February 8, 2008), 73 FR 8917 (February 15, 2008) (SR–NYSEArca–2007–78) (approving the trading of units of the United States Heating Oil Fund, LP and United States Gasoline Fund, LP pursuant to UTP).

[21] *See, e.g.*, Securities Exchange Act Release Nos. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (approving the listing of shares of the ProShares Ultra DJ-AIG Commodity, ProShares UltraShort DJ-AIG Commodity, ProShares Ultra DJ-AIG Agriculture, ProShares UltraShort DJ-AIG Agriculture, ProShares Ultra DJ-AIG Crude Oil, ProShares UltraShort DJAIG Crude Oil, ProShares Ultra Gold, ProShares UltraShort Gold, ProShares Ultra Silver, ProShares UltraShort Silver, ProShares Ultra Euro, ProShares UltraShort Euro, ProShares Ultra Yen, and ProShares UltraShort Yen Funds (collectively, the ''Funds'')); and 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (approving the listing of shares of the Funds on the Exchange).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–125 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, and 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–125 and should be submitted on or before January 26, 2009.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–2008–125), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

[22] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31352 Filed 1–5–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 304X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Henry County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.20-mile line of railroad between milepost DW 41.60, and milepost DW 45.80, in Martinsville, Henry County, VA. The line traverses United States Postal Service Zip Code 24112 and includes the former stations of Martinsville and Jones Creek.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 5, 2009, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 16, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 26, 2009, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 9, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 6, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

[23] 17 CFR 200.30–3(a)(12).

[1] NSR's representative has been informed that the earliest this transaction may be consummated is February 5, 2009. NSR originally indicated a consummation date of February 4, 2009.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

Decided: December 23, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–31133 Filed 1–5–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of New Pricing Methodology for Numismatic Products Containing Platinum and Gold Coins

SUMMARY: The United States Mint is implementing a new pricing methodology for its numismatic products containing platinum and gold coins to mitigate the effect that fluctuating gold and platinum commodity costs has on the pricing of these products. The new pricing methodology is based primarily on the London Fix weekly average (average of the London Fix prices covering the previous Thursday a.m. Fix through the Wednesday a.m. Fix) platinum and gold prices, which reflect the market value of the platinum and gold bullion that these products contain. As required by law, the prices of these products also must be sufficient to recover all other costs incurred by the United States Mint, such as the cost of minting, marketing, and distributing such products (including labor, materials, dies, use of machinery, and promotional and overhead expenses). This pricing methodology will allow the United States Mint to change the prices of these products as often as weekly so they better reflect the costs of platinum and gold on the open markets.

DATES: The new pricing methodology, as further explained in the **SUPPLEMENTARY INFORMATION** section, will go into effect on January 12, 2008.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW.; Washington , DC 20220; or call 202–354–7500.

SUPPLEMENTARY INFORMATION: Pursuant to the authority that 31 U.S.C. 5111(a)(3), 5112(i), 5112(k), 5112(o), and 5112(q) grant the Secretary of the Treasury to mint and issue gold and platinum coins and to prepare and distribute numismatic items, the United States Mint sells to the public numismatic products containing American Eagle Gold and Platinum Coins, American Buffalo Gold Coins, First Spouse Gold Coins, and the 2009 United States Mint Ultra High Relief Double Eagle Gold Coin. In accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is changing the prices of these coins to reflect a new methodology in pricing.

Effective January 12, 2009, the United States Mint will commence selling numismatic products containing American Eagle Gold and Platinum Coins, American Buffalo Gold Coins, First Spouse Gold Coins, and the 2009 United States Mint Ultra High Relief Double Eagle Gold Coin at prices established by using the new pricing methodology. Specifically, each Wednesday, the United States Mint will apply the average London Fix for platinum and gold (average of the London Fix prices covering the previous Thursday A.M. Fix through the Wednesday A.M. Fix) to the below pricing schedules. Price adjustments as a result of this process, if any, will be effective at 10 a.m. E.S.T. on the immediately following Thursday.

PRICING OF NUMISMATIC PRODUCTS CONTAINING GOLD COINS [1]

Average price of gold		American buffalo gold proof	American buffalo gold uncirculated	American eagle gold proof	American eagle gold uncirculated	Celebration coin	8–8–08 double prosperity	First spouse 24K proof	First spouse 24K uncirculated	2009 United States mint ultra high relief double eagle gold coin
$500.00 to $549.99.	1 oz	$810.00	$808.00	$785.00	$778.00	$797.00	$825.00			$889.00
	½ oz	$432.00	$429.00	$406.00	$400.00			$429.00	$416.00	
	¼ oz	$241.50	$239.00	$215.50	$209.50					
	1/10 oz	$127.00	$124.00	$100.50	$94.50					
	4 coins	$1,488.00	$1,485.00	$1,458.00	$1,450.00					
$550.00 to $599.99.	1 oz	$860.00	$858.00	$835.00	$828.00	$847.00	$875.00			$939.00
	½ oz	$457.00	$454.00	$431.00	$425.00			$454.00	$441.00	
	¼ oz	$254.00	$251.50	$228.00	$222.00					
	1/10 oz	$132.00	$129.00	$105.50	$99.50					
	4 coins	$1,580.50	$1,577.50	$1,550.50	$1,542.50					
$600.00 to $649.99.	1 oz	$910.00	$908.00	$885.00	$878.00	$897.00	$925.00			$989.00
	½ oz	$482.00	$479.00	$456.00	$450.00			$479.00	$466.00	
	¼ oz	$266.50	$264.00	$240.50	$234.50					
	1/10 oz	$137.00	$134.00	$110.50	$104.50					
	4 coins	$1,673.00	$1,670.00	$1,643.00	$1,635.00					
$650.00 to $699.99.	1 oz	$960.00	$958.00	$935.00	$928.00	$947.00	$975.00			$1,039.00
	½ oz	$507.00	$504.00	$481.00	$475.00			$504.00	$491.00	
	¼ oz	$279.00	276.50	$253.00	$247.00					
	1/10 oz	$142.00	$139.00	$115.50	$109.50					
	4 coins	$1,765.50	$1,762.50	$1,735.50	$1,727.50					
$700.00 to $749.99.	1 oz	$1,010.00	$1,008.00	$985.00	$978.00	$997.00	$1,025.00			$1,089.00
	½ oz	$532.00	$529.00	$506.00	$500.00			$529.00	516.00	
	¼ oz	$291.50	$289.00	$265.50	$259.50					
	1/10 oz	$147.00	$144.00	$120.50	$114.50					
	4 coins	$1,858.00	$1,855.00	$1,828.00	$1,820.00					
$750 to $799.99	1 oz	$1,060.00	$1,058.00	$1,035.00	$1,028.00	$1,047.00	$1,075.00			$1,139.00
	½ oz	$557.00	$554.00	$531.00	$525.00			$554.00	$541.00	
	¼ oz	$304.00	$301.50	$278.00	$272.00					
	1/10 oz	$152.00	$149.00	$125.50	$119.50					
	4 coins	$1,950.50	$1,947.50	$1,920.50	$1,912.50					
$800.00 to $849.99.	1 oz	$1,110.00	$1,108.00	$1,085.00	$1,078.00	$1,097.00	$1,125.00			$1,189.00

PRICING OF NUMISMATIC PRODUCTS CONTAINING GOLD COINS [1]—Continued

Average price of gold		American buffalo gold proof	American buffalo gold uncirculated	American eagle gold proof	American eagle gold uncirculated	Celebration coin	8–8–08 double prosperity	First spouse 24K proof	First spouse 24K uncirculated	2009 United States mint ultra high relief double eagle gold coin
	½ oz	$582.00	$579.00	$556.00	$550.00			$579.00	$566.00	
	¼ oz	$316.50	$314.00	$290.50	$284.50					
	1/10 oz	$157.00	$154.00	$130.50	$124.50					
	4 coins	$2,043.00	$2,040.00	$2,013.00	$2,005.00					
$850.00 to $899.99.	1 oz	$1,160.00	$1,158.00	$1,135.00	$1,128.00	$1,147.00	$1,175.00			$1,239.00
	½ oz	$607.00	$604.00	$581.00	$575.00			$604.00	$591.00	
	¼ oz	$329.00	$326.50	$303.00	$297.00					
	1/10 oz	$162.00	$159.00	$135.50	$129.50					
	4 coins	$2,135.50	$2,132.50	$2,105.50	$2,097.50					
$900.00 to $949.99.	1 oz	$1,210.00	$1,208.00	$1,185.00	$1,178.00	$1,197.00	$1,225.00			$1,289.00
	½ oz	$632.00	$629.00	$606.00	$600.00			$629.00	$616.00	
	¼ oz	$341.50	$339.00	$315.50	$309.50					
	1/10 oz	$167.00	$164.00	$140.50	$134.50					
	4 coins	$2,228.00	$2,225.00	$2,198.00	$2,190.00					
$950.00 to $999.99.	1 oz	$1,260.00	$1,258.00	$1,235.00	$1,228.00	$1,247.00	$1,275.00			$1,339.00
	½ oz	$657.00	$654.00	$631.00	$625.00			$654.00	$641.00	
	¼ oz	$354.00	$351.50	$328.00	$322.00					
	1/10 oz	$172.00	$169.00	$145.50	$139.50					
	4 coins	$2,320.50	$2,317.50	$2,290.50	$2,282.50					
$1,000.00 to $1,049.99.	1 oz	$1,310.00	$1,308.00	$1,285.00	$1,278.00	$1,297.00	$1,325.00			$1,389.00
	½ oz	$682.00	$679.00	$656.00	$650.00			$679.00	$666.00	
	¼ oz	$366.50	$364.00	$340.50	$334.50					
	1/10 oz	$177.00	$174.00	$150.50	$144.50					
	4 coins	$2,413.00	$2,410.00	$2,838.00	$2,375.00					
$1,050.00 to $1,099.99.	1 oz	$1,360.00	$1,358.00	$1,335.00	$1,328.00	$1,347.00	$1,375.00			$1,439.00
	½ oz	$707.00	$704.00	$681.00	$675.00			$704.00	$691.00	
	¼ oz	$379.00	$376.50	$353.00	$347.00					
	1/10 oz	$182.00	$179.00	$155.50	$149.50					
	4 coins	$2,505.50	$2,502.50	$2,475.50	$2,467.50					
$1,100.00 to $1,149.99.	1 oz	$1,410.00	$1,408.00	$1,385.00	$1,378.00	$1,397.00	$1,425.00			$1,489.00
	½ oz	$732.00	$729.00	$706.00	$700.00			$729.00	$716.00	
	¼ oz	$391.50	$389.00	$365.50	$359.50					
	1/10 oz	$187.00	$184.00	$160.50	$154.50					
	4 coins	$2,598.00	$2,959.00	$2,568.00	$2,560.00					
$1,150.00 to $1,199.99.	1 oz	$1,460.00	$1,458.00	$1,435.00	$1,428.00	$1,447.00	$1,475.00			$1,539.00
	½ oz	$757.00	$754.00	$731.00	$725.00			$754.00	$741.00	
	¼ oz	$404.00	$401.50	$378.00	$372.00					
	1/10 oz	$192.00	$189.00	$165.50	$159.50					
	4 coins	$2,690.50	$2,687.50	$2,660.50	$2,652.50					

[1] The price of each gold product consists of the following components: cost of metal, cost to manufacture (including overhead) and margin. The pricing schedule is based upon a spot price of gold at $725.00 per FTO. At this spot price, the respective approximate average ranges for each component as a percentage of total price are as follows: cost of metal 66%–74%, cost to manufacture (including overhead) 11% to 19%, and margin 15%.

PRICING OF NUMISMATIC PRODUCTS CONTAINING PLATINUM COINS [1]

Average price of platinum		American eagle platinum proof	American eagle platinum uncirculated	American eagle 10th anniversary
$550.00 to $649.99	1 oz	$892.00	$885.00	$930.00
	½ oz	$462.00	$455.00	
	¼ oz	$246.00	$240.00	
	1/10 oz	$117.00	$111.50	
	4 coins	$1,670.00	$1,660.00	
$650.00 to $749.99	1 oz	$992.00	$985.00	$1,030.00
	½ oz	$512.00	$505.00	
	¼ oz	$271.00	$265.00	
	1/10 oz	$127.00	$121.50	
	4 coins	$1,855.00	$1,845.00	
$750.00 to $849.99	1 oz	$1,092.00	$1,085.00	$1,130.00
	½ oz	$562.00	$555.00	
	¼ oz	$296.00	$290.00	
	1/10 oz	$137.00	$131.50	
	4 coins	$2,040.00	$2,030.00	
$850.00 to $949.99	1 oz	$1,192.00	$1,185.00	$1,230.00
	½ oz	$612.00	$605.00	

PRICING OF NUMISMATIC PRODUCTS CONTAINING PLATINUM COINS [1]—Continued

Average price of platinum		American eagle platinum proof	American eagle platinum uncirculated	American eagle 10th anniversary
	¼ oz	$321.00	$315.00	
	1/10 oz	$147.00	$141.50	
	4 coins	$2,225.00	$2,215.00	
$950.00 to $1,049.99	1 oz	$1,292.00	$1,285.00	$1,330.00
	½ oz	$662.00	$655.00	
	¼ oz	$346.00	$340.00	
	1/10 oz	$157.00	$151.50	
	4 coins	$2,410.00	$2,400.00	
$1,050.00 to $1,149.99	1 oz	$1,392.00	$1,385.00	$1,430.00
	½ oz	$712.00	$705.00	
	¼ oz	$371.00	$365.00	
	1/10 oz	$167.00	$161.50	
	4 coins	$2,595.00	$2,585.00	
$1,150.00 to $1,249.99	1 oz	$1,492.00	$1,485.00	$1,530.00
	½ oz	$762.00	$755.00	
	¼ oz	$396.00	$390.00	
	1/10 oz	$177.00	$171.50	
	4 coins	$2,780.00	$2,770.00	
$1,250.00 to $1,349.99	1 oz	$1,592.00	$1,585.00	$1,630.00
	½ oz	$812.00	$805.00	
	¼ oz	$421.00	$415.00	
	1/10 oz	$187.00	$181.50	
	4 coins	$2,965.00	$2,955.00	
$1,350.00 to $1,449.99	1 oz	$1,692.00	$1,685.00	$1,730.00
	½ oz	$862.00	$855.00	
	¼ oz	$446.00	$440.00	
	1/10 oz	$197.00	$191.50	
	4 coins	$3,150.00	$3,140.00	
$1,450.00 to $1,549.99	1 oz	$1,792.00	$1,785.00	$1,830.00
	½ oz	$912.00	$905.00	
	¼ oz	$471.00	$465.00	
	1/10 oz	$207.00	$201.50	
	4 coins	$3,335.00	$3,325.00	
$1,550.00 to $1,649.99	1 oz	$1,892.00	$1,885.00	$1,930.00
	½ oz	$962.00	$955.00	
	¼ oz	$496.00	$490.00	
	1/10 oz	$217.00	$211.50	
	4 coins	$3,520.00	$3,510.00	
$1,650.00 to $1,749.99	1 oz	$1,992.00	$1,985.00	$2,030.00
	½ oz	$1,012.00	$1,005.00	
	¼ oz	$521.00	$515.00	
	1/10 oz	$227.00	$221.50	
	4 coins	$3,705.00	$3,695.00	
$1,750.00 to $1,849.99	1 oz	$2,092.00	$2,085.00	$2,130.00
	½ oz	$1,062.00	$1,055.00	
	¼ oz	$546.00	$540.00	
	1/10 oz	$237.00	$231.50	
	4 coins	$3,890.00	$3,880.00	
$1,850.00 to $1,949.99	1 oz	$2,192.00	$2,185.00	$2,230.00
	½ oz	$1,112.00	$1,105.00	
	¼ oz	$571.00	$565.00	
	1/10 oz	$247.00	$241.50	
	4 coins	$4,075.00	$4,065.00	
$1,950.00 to $2,049.99	1 oz	$2,292.00	$2,285.00	$2,330.00
	½ oz	$1,162.00	$1,155.00	
	¼ oz	$596.00	$590.00	
	1/10 oz	$257.00	$251.50	
	4 coins	$4,260.00	$4,250.00	
$2,050.00 to $2,149.99	1 oz	$2,392.00	$2,385.00	$2,430.00
	½ oz	$1,212.00	$1,205.00	
	¼ oz	$621.00	$615.00	
	1/10 oz	$267.00	$261.50	
	4 coins	$4,445.00	$4,435.00	

[1] The price of each platinum product consists of the following components: cost of metal, cost to manufacture (including overhead) and margin. This price schedule is based upon a spot price of platinum at $800.00 per FTO. At this spot price, the respective approximate average ranges for each component as a percentage of total price are as follows: cost of metal 71%–74%, cost to manufacture (including overhead) 11%–14%, and margin 15%.

Authority: 31 U.S.C. 5111, 5112 and 9701.

Dated: December 30, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–31424 Filed 1–5–09; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,
January 6, 2009

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury

Office of Thrift Supervision

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2008–0027]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1349]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2008–0022]

RIN 3064–AC97

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (the agencies) are adopting as final the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) that were proposed on July 11, 2007. In response to comments received, the agencies clarified several of the new and revised questions and answers that were proposed and are withdrawing the proposed revisions to an existing question and answer. Also, in response to comments we received, the agencies are proposing a new question and answer that would provide examples of how an institution can determine that community services it provides are targeted to low- and moderate-income individuals. The agencies are also proposing to revise two existing questions and answers to allow pro rata consideration in certain circumstances for an activity that provides affordable housing targeted to low-or moderate-income individuals. The agencies invite public comment on these proposed new and revised questions and answers.

DATES: Effective date of amended Interagency Questions and Answers Regarding Community Reinvestment: January 6, 2009. We request that comments on the proposed questions and answers be submitted on or before: March 9, 2009.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., *Attn.:* Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2008–0027'' in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

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

Board: You may submit comments, identified by Docket No. OP–1349, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper 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.

FDIC: You may submit comments, identified by RIN number 3064–AC97 by any of the following methods:

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

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by OTS–2008–0022, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov*. Please include ID OTS–2008–0022 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, *Attention:* OTS–2008–0022.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, *Attention:* Regulation Comments, Chief Counsel's Office, *Attention:* OTS–2008–0022.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, FDIC, and OTS implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 228, 345, and 563e. The OCC, Board, and FDIC revised their CRA regulations in a joint final rule published on August 2, 2005 (70 FR 44256) (2005 joint final rule). OTS did not join the agencies in adopting the August 2005 joint final rule; OTS published separate final rules on August 18, 2004 (69 FR 51155), March 2, 2005 (70 FR 10023), April 12, 2006 (71 FR 18614), and March 22, 2007 (72 FR 13429). On July 1, 2007, the March 2007 revisions to OTS's CRA regulation became effective, making OTS's CRA regulation substantially the same as the CRA regulations of the OCC, Board, and FDIC.

The agencies' regulations are interpreted primarily through the ''Interagency Questions and Answers Regarding Community Reinvestment'' (Questions and Answers), which provide guidance for use by agency personnel, financial institutions, and the public. The Questions and Answers were first published under the auspices of the Federal Financial Institution Examination Council (FFIEC) in 1996 (61 FR 54647), and were revised on July 12, 2001 (2001 Questions and Answers) (66 FR 36620).

Subsequent to the adoption of the 2005 joint final rule, the OCC, Board, and FDIC, after notice and public comment, published new guidance in the form of questions and answers on March 10, 2006 (71 FR 12424) (2006 Questions and Answers). The 2006 Questions and Answers addressed primarily matters related to the 2005 joint final rule. On September 5, 2006, after notice and public comment, OTS published new guidance in the form of questions and answers pertaining to the revised definition of ''community development'' and certain other provisions of the CRA rule common to all four agencies (OTS's September 2006 Questions and Answers). 71 FR 52375.

On July 11, 2007, the agencies published for comment proposed guidance, which updated and revised the 2001 Questions and Answers and combined the 2006 Questions and Answers and OTS's September 2006 Questions and Answers. The proposal also introduced nine proposed new questions and answers (Q&As). 72 FR 37922. OTS also proposed four new and revised Q&As that the OCC, Board, and FDIC had adopted in the 2006 Questions and Answers, primarily relating to intermediate small savings associations.

Together, the agencies received comments from 58 different parties. The commenters represented financial institutions and their trade associations, community development advocates and organizations, members of Congress, and others.

As discussed below, this document adopts the nine new Q&As that were proposed in 2007, with revisions, as appropriate, in response to comments received. The agencies are also adopting, with minor revisions, as appropriate, all but one of the proposed revised Q&As. The agencies are withdrawing the proposed revisions to Q&A §____.23(e)–2.

The agencies also are proposing one new and two revised Q&As, which are discussed below. These proposed Q&As have been developed in response to comments received by the agencies.

The Interagency Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for state nonmember banks, they appear at 12 CFR 345.26; and for thrifts, the small savings association performance standards appear at 12 CFR 563e.26. Accordingly, the citation would be to 12 CFR____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR____.26 would be identified as §____.26–1.

Although a particular Q&A may be found under one regulatory provision, e.g., 12 CFR____.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR____.26. Thus, readers with a particular interest in small institution issues, for example, should also consult the guidance that describes the lending, investment, and service tests.

The Questions and Answers are indexed to aid readers in locating specific information in the document.

The index contains keywords, listed alphabetically, along with numerical indicators of questions and answers that relate to that keyword. The list of Q&As addressing each keyword in the index is not intended to be exhaustive. We welcome suggestions for additional entries to the index.

Discussion of the Q&As Being Adopted as Final

New Q&As Proposed in 2007

I. *Investments in minority- or women-owned financial institutions and low-income credit unions.* The agencies proposed a new Q&A § ____.12(g)–4 that would interpret the statutory provision that allows the agencies to consider as a factor a majority-owned financial institution's activities in cooperation with a minority- or women-owned financial institution or low-income credit union. *See* 12 U.S.C. 2903(b). Twenty-five commenters addressed the new Q&A as proposed. Although five commenters believed that the proposed guidance went directly against the intent of the CRA regulations, the rest of the commenters were generally in favor of the new Q&A. Several commenters, however, suggested additions or modifications that could be made to the guidance.

We are modifying the proposed Q&A to address some of these comments. Four commenters urged the agencies to allow consideration of activities in cooperation with minority- or women-owned financial institutions or low-income credit unions only if the majority-owned institution had adequately addressed the credit needs of its assessment area(s). The agencies believe that the statute currently does not impose such a limitation. However, in response to the comment, we have clarified that the impact of such activities on a majority-owned institution's rating will be determined in conjunction with an assessment of its overall performance in its assessment area(s).

Two commenters specifically asked the agencies to provide examples of ''other ventures'' that could receive consideration if engaged in by a majority-owned financial institution in cooperation with a minority- or women-owned financial institution or low-income credit union. Several examples of ''other ventures'' have been added to the answer.

Six commenters suggested that activities in cooperation with community development financial institutions (CDFIs) should be allowed the same broader geographic allowance that the statute allows for activities in cooperation with minority- or women-owned financial institutions or low-income credit unions. The statute does not provide a similar provision for activities in cooperation with CDFIs. Because the statute and regulation otherwise generally focus on a financial institution's activities that benefit its local community, the agencies do not believe it is appropriate to apply the relaxed geographic requirement to CDFIs or other entities.

One other commenter suggested that the agencies should delete the final sentence of the proposed Q&A: ''The activities must, however, help meet the credit needs of the local communities in which the minority- or women-owned institutions or low-income credit unions are chartered.'' The commenter's concern was that this sentence might be read to require the majority-owned financial institution to prove that its involvement with the minority- or women-owned institution or low-income credit union ultimately can be directly linked to a specific CRA-related activity of the minority bank. The CRA statute specifically conditions consideration of activities in cooperation with minority- or women-owned institutions or low-income credit unions on those activities helping to meet the credit needs of the local communities in which the minority- or women-owned institutions or low-income credit unions are chartered. Therefore, the sentence has not been removed. The majority-owned financial institution should have a general understanding, prior to engaging in an activity in cooperation with a minority- or women-owned institution or low-income credit union, about how the activity will help to meet the credit needs of the community in which the minority- or women-owned institution or low-income credit union is chartered; however, no specific type of proof is required.

II. *Intermediate small institutions' affordable home mortgage loans and small business and small farm loans.* The agencies received eleven comments addressing proposed new Q&A § ____.12(h)–3, which would allow an intermediate small institution to select certain home mortgage, small business, and small farm loans, which are not required to be reported under the CRA or Home Mortgage Disclosure Act (HMDA) regulations, to be considered as community development loans. All of the commenters supported the proposed Q&A.

The agencies are adopting the Q&A with clarifying revisions based on commenters' questions and suggestions. For example, one commenter asked whether an intermediate small institution's voluntary reporting of small business or small farm loan data would disqualify it from the optional selection of some of those loans as community development loans. The guidance clarifies that optional reporting of small business or small farm loan data will not prevent an intermediate small institution from choosing some of those loans to be considered as community development loans unless the intermediate small institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions.

One commenter asked whether an intermediate small institution that is required to report home mortgage lending under HMDA would be able to opt to have some of its home mortgage loans considered as community development loans. Because the home mortgage loans are required to be reported under HMDA, they may be considered only as home mortgage loans (unless they are multifamily dwelling loans).

The guidance has also been revised to clarify that an intermediate small institution may select individual loans (other than home mortgage loans reported under HMDA) to be considered as community development loans. An institution need not select an entire portfolio for consideration as community development loans.

The agencies note that intermediate small institutions that opt to have certain home mortgage, small business, and small farm loans considered as community development loans should notify their examiners which loans it has elected for this consideration prior to or at the start of their CRA examinations.

III. *Examples of ''other loan data.''* The agencies received seventeen comments addressing proposed new Q&A § ____.22(a)(2)–4, which listed examples of ''other loan data'' that would be considered under the lending test. Most of the commenters supported the proposed Q&A. However, a number of commenters suggested that some of the types of ''other loan data'' should be treated the same as direct lending.

Several commenters asserted that letters of credit should be treated as loan originations. They noted that, although letters of credit are not immediately (if ever) funded, the institution must underwrite them in the same way direct loans are underwritten and must also ensure that funds are available for eventual funding. Further, many community development projects would not be financed without the back-up support provided by a financial

institution's letter of credit. For these reasons, commenters urged that letters of credit be considered as loan originations.

The CRA regulations provide that letters of credit will be considered as ''other loan data.'' The agencies cannot change treatment of letters of credit in the regulations through interpretation. However, the agencies will consider the issue again in the event they undertake more comprehensive changes to the CRA regulations. The agencies also plan to remind examiners that letters of credit may deserve specific mention in the narrative of an institution's public performance evaluation.

Commenters also asserted that an institution's loans for mixed-income housing should not be considered under ''other loan data.'' Instead, commenters proposed that institutions should receive consideration for such loans (or investments) that enable community development, such as mixed-income projects that have an affordable housing component, as community development loans (or qualified investments).

The agencies are adopting Q&A § ____.22(a)(2)–4 as proposed. However, as discussed below, we are also proposing for comment a revised Q&A § ____.12(h)–8 discussing what is meant by a ''primary purpose of community development.'' If this proposed revision is adopted as final, ''loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing'' would be deleted from the list of examples of ''other loan data'' because these would be covered in that revised guidance which would allow an institution to receive pro rata consideration for the portion of a loan or investment that helps to provide affordable housing to low- or moderate-income individuals. In the meantime, however, institutions may continue to present such loans to examiners as ''other loan data.''

IV. *Purchased loan participations.* Ten commenters addressed proposed Q&A § ____.22(a)(2)–6, which clarified that the purchase of a loan participation is treated as the purchase of a loan. The majority of the commenters supported the proposed guidance; however, one commenter expressed concern that loans could be resold numerous times merely to inflate their value for CRA evaluation purposes. We have modified this Q&A to clarify that examiners will consider whether loan participations (and other loan purchases) have been resold merely to inflate their value for CRA purposes when they evaluate an institution's lending activity.

V. *Small business loans secured by a one-to-four family residence.* The agencies proposed § ____.22(a)(2)–7 to provide guidance about small business and small farm loans where a dwelling serves as collateral. As discussed in the supplementary information published with the proposed guidance, the new Q&A was called for because of changes to the Board's Regulation C regarding the treatment of refinancings of home mortgage loans. *See* 72 FR at 37925. We received twelve comments addressing this proposed Q&A, primarily in support of the proposed Q&A. We are adopting the Q&A as proposed.

VI. *Investments in a national or regional fund.* The agencies proposed Q&A § ____.23(a)–2 to clarify how an institution that makes a loan or investment in a national or regional community development fund may demonstrate that the investment meets the geographic requirements of the CRA regulation. The proposed Q&A suggested alternative methods for documenting that the investment was intended to benefit the institution's assessment area.

Thirty-three commenters addressed this guidance. One theme in many of the comments was that investments in national funds should be treated in the same manner as statewide or regional funds. The regulations state that the investment test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). *See* 12 CFR 25.23(a), 228.23(a), 345.23(a), and 563e.23(a). Investments in nationwide funds, like investments in other funds, are subject to these standards. An institution may wish to provide documentation from a nationwide fund to demonstrate the geographic benefit to the institution's assessment area(s) or the broader statewide or regional area that includes its assessment area(s).

Because the proposed Q&A addressed investments in both national and regional funds, some commenters were confused about the types of investments the agencies intended to address in the proposed Q&A. The proposed Q&A was intended to address investments in nationwide funds or in any fund that is not limited to the statewide or regional area that includes the institution's assessment area(s). Because other existing Q&As address investments in statewide and regional funds, Q&A § ____.23(a)–2 has been revised to address specifically investments in ''nationwide'' funds. Institutions that invest in statewide or regional funds should refer to Q&As § ____.12(h)–6 and § ____.12(h)–7 for guidance. The guidance in these Q&As has not been changed.

Commenters also addressed a number of other issues. One commenter believed that the requirements in the proposed Q&A for an investment in a nationwide fund were more rigorous than the regulations required, in that the proposed Q&A focused on benefit to an institution's assessment area, without also considering benefit to the broader statewide or regional area that includes the institution's assessment area(s). The Q&A has been revised to clarify that investments in nationwide funds will be reviewed to determine whether they directly or indirectly benefit one or more of an institution's assessment areas or a broader statewide or regional area that includes the institution's assessment area(s).

Several commenters understood the proposal to suggest that the documentation methods put forward in the proposed Q&A was an exclusive, mandatory list. The agencies have clarified the final Q&A to provide that the documentation methods identified are among those that may, at the institution's option, be provided. The agencies will accept any information provided by an institution that reasonably demonstrates that the purpose, mandate, or function of a nationwide fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted often will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation.

Some commenters also asserted that institutions should receive consideration for the full dollar amount of any investment in a nationwide fund if at least one project in which the fund invests is located in the institution's assessment area or the broader statewide or regional area that includes the institution's assessment area. The agencies have not incorporated this specific recommendation into the text of the Q&A. The agencies believe that the final Q&A provides sufficient flexibility to address a variety of different circumstances, given the evolving nature and significance of nationwide funds.

VII. *Examination as an intermediate small institution.* Proposed new Q&A §____.26(a)(2)–1 clarified that there is no lag period between becoming an intermediate small institution and being examined as an intermediate small institution. Eight commenters addressed this new guidance; all were supportive. The agencies are adopting this new Q&A as proposed.

Several commenters suggested that the agencies should provide technical assistance to small institutions that are about to become intermediate small institutions at the institutions' request. The agencies currently provide technical assistance to small institutions in transition to becoming ''intermediate small'' institutions.

VIII. *Reporting of a participation in a community development loan.* The agencies proposed Q&A §____.42(b)(2)–4 to clarify that institutions that purchase community development loan participations should report only the amount of their purchase. The supplementary information published with the proposal noted that the requirement to report only the dollar amount of the participation purchased for community development loans differs from the requirements for reporting small business and small farm loan participations. When an institution reports participations or purchases of small business and small farm loans, it must report the entire loan amount at origination.

Eight commenters addressed this proposed Q&A. One commenter recommended the agencies adopt consistent requirements governing the way loans are reported. Another commenter noted that different requirements may be appropriate because reporting the purchased amount of the loan more accurately reflects the actual dollar amount of an institution's community development lending. After consideration of the comments received, the agencies are adopting the Q&A as proposed because the agencies believe that reporting the amount purchased, rather than the amount at origination, more accurately portrays the institution's involvement in community development lending.

IX. *Refinanced or renewed community development loans.* The agencies proposed Q&A §____.42(b)(2)–5 to clarify that institutions should collect information about community development loans that they refinance or renew as loan originations. The Q&A also notes that, generally, the same limitations that apply to the reporting of refinancings and renewals of small business and small farm loans apply to the reporting of refinancings and renewals of community development loans. For example, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. Eight commenters commented on, and supported adoption of this proposed Q&A. The agencies are adopting the Q&A as proposed.

Revised Q&As Proposed in 2007 That Were Specifically Described in the Supplementary Information

I. *Activities that promote economic development.* The agencies proposed to revise Q&A §____.12(g)(3)–1, which describes the types of activities that promote economic development by financing small businesses and small farms. The revisions clarified the language of the guidance, and added loans to or investments in Rural Business Investment Companies (RBICs) and New Markets Tax Credit-Eligible Community Development Entities (CDEs) as types of loans or investments that the agencies will presume to promote economic development. Fourteen commenters addressed these proposed revisions, including five that represented community development financial institutions (CDFIs). All fourteen commenters supported adoption of the proposed revisions. The agencies are adopting the revised Q&A as proposed.

CDFI representative commenters urged the agencies to also presume that loans to or investments in CDFIs promote economic development. Q&A §____.12(g)(3)–1 applies only to the prong of the definition of ''community development'' addressing promoting economic development by financing small businesses and small farms. The agencies have not adopted this suggestion. Existing Q&A §____.12(t)–4 lists as examples of qualified investments ''investments, grants, deposits, or shares in or to * * * CDFIs that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation.'' In addition, if a CDFI were engaged in activities that promote economic development by financing small businesses or small farms, investments in or loans to the CDFI would have a primary purpose of community development.

II. *Examples of community development loans.* The agencies proposed to revise Q&A §____.12(h)–1, which provides examples of community development loans, to add a loan to a New Markets Tax Credit-Eligible CDE as an example of a community development loan. The agencies also proposed to revise this Q&A by adding a new bullet explaining that another example of a community development loan is a loan in an amount greater than $1 million to a business, when the loan is made as part of the Small Business Administration's 504 Certified Development Company program. The three commenters that addressed the proposed revisions to this Q&A recommended that they be adopted. The agencies are adopting this Q&A as proposed.

III. *Examples of community development services.* The agencies proposed to revise Q&A §____.12(i)–3, which lists examples of community development services, to add as a new example of a community service ''increasing access to financial services by opening or maintaining branches and other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d).'' The agencies also proposed to revise this Q&A to highlight that credit counseling that can assist borrowers in avoiding foreclosure on their homes would be a community development service. Finally, the agencies proposed to add individual retirement accounts (IDAs) and free payroll check cashing services that increase access to financial services for low- or moderate-income individuals to the examples of financial services with the primary purpose of community development.

The agencies received ten comments addressing these proposed revisions. All of the commenters generally favored adopting the proposed revisions. The agencies are adopting the proposed Q&A with several revisions.

One commenter suggested that the reference to ''free'' check cashing should be changed to ''affordable'' or ''low-cost'' check cashing services that increase access to financial services for low- or moderate-income individuals. The agencies have revised the Q&A to reference free and low-cost check cashing. In addition, the agencies have clarified that low-cost bank accounts can be either savings or checking accounts.

To help to address current economic conditions and issues, the agencies have added an additional example of a

community development service: Foreclosure prevention programs to low-or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings. The agencies have also clarified that, to qualify as a community development service, credit counseling to assist borrowers in avoiding foreclosure on their homes should be targeted to low- and moderate-income borrowers, based on the definition of community development at 12 CFR ____ .12(g)(2).

Finally, in the proposed Q&A, an existing bullet addressing school savings programs and financial education was split into two separate bullets. This change has not been adopted; however, the agencies are adopting a minor revision incorporating the commonly used term, ''financial literacy,'' to the bullet.

IV. *Federal Home Loan Bank (FHLB) unpaid dividends.* The agencies proposed to revise Q&A § ____.12(t)–3 to clarify that funds retained by FHLBs to support the Affordable Housing Program (AHP), rather than being paid out to investor financial institutions as dividends, are not qualified investments by the financial institutions. The agencies received three comments addressing this proposed revision. One commenter supported confirmation of the existing policy. The other two commenters were concerned that this position may have the unintended effect of creating a disincentive for FHLB member institutions to participate in the AHP and, ultimately, undermine industry support for the program. The agencies considered this comment, but still believe that funds that are retained by the FHLBs are not qualified investments by the financial institutions that do not receive them as dividends. The Q&A continues to point out that institutions' other activities in connection with the FHLBs' AHP program would be considered in an institution's CRA evaluation—for example, providing technical assistance to applicants would be considered as a community development service. The agencies are adopting this Q&A as proposed.

V. *Examples of qualified investments.* The agencies proposed to revise Q&A § ____.12(t)–4, which lists examples of qualified investments, to add an investment in a New Markets Tax Credit-Eligible CDE as an additional example. The proposal also would have added as an example of a qualified investment an investment in a community development venture capital company that promotes economic development by financing small businesses. The agencies received two comments on these proposed revisions, which recommended adoption. The Q&A is being adopted as proposed.

VI. *Small institution adjustment.* The agencies proposed to revise Q&A § ____.12(u)(2)–1, which provides information about the annual adjustments to the asset-size thresholds for small institutions and intermediate small institutions, to refer the reader to the FFIEC's Web site for historical and current asset-size threshold information. The two commenters that addressed this proposed change supported its adoption. The agencies are adopting the Q&A as proposed.

VII. *Responsive lending activities.* The agencies proposed to revise Q&A § ____.22(a)–1, which discusses types of lending activities that may warrant favorable consideration as being responsive to the credit needs of the institution's assessment area(s). The proposed revision highlighted that establishing loan programs that provide relief to low- and moderate-income homeowners who are facing foreclosure is a lending activity that would warrant consideration as being responsive to the needs of an institution's assessment areas. The agencies received six comments addressing this proposed revision. All supported the proposed revision.

The agencies are adopting the proposed revised Q&A with clarifying changes. First, the agencies have provided examples of the types of loan programs that provide relief from foreclosure, e.g., establising loan programs with the objective of providing affordable, sustainable, long-term relief through refinancings, restructures, or modifications. Second, the word, ''homes,'' has been replaced by ''primary residences'' to clarify the scope of the Q&A.

In April 2007, the agencies issued a joint statement entitled, ''Statement on Working With Mortgage Borrowers.'' In that statement, the agencies encouraged institutions to work with borrowers who are financially unable to make their contractual payment obligations on their home loans. The statement noted that financial institutions may receive favorable CRA consideration for programs that transition low- and moderate-income borrowers from higher cost loans to lower cost loans, provided the loans are made in a safe and sound manner. Consistent with the statement, the proposed Q&A addressed only loan programs that provide relief to low- and moderate-income homeowners who are facing foreclosure as a type of lending activity that would warrant consideration as being responsive to the credit needs of an institution's assessment areas. However, under the regulation, the agencies assess an institution's responsiveness to credit needs in each of its assessment area(s). *See* 12 CFR parts 25, 228, 345 and 563e at App. A(b)(1)(i). The agencies believe that foreclosure assistance to homeowners who are facing foreclosure on their primary residences would be responsive to the needs of an institution's assessment area(s). Therefore, the agencies have revised the final Q&A to refer to ''homeowners'' generally.

VIII. *Constraints on affiliate lending.* Q&A § ____.22(c)(2)(i)–1 provides that an affiliate may not claim a loan origination or loan purchase for CRA purposes if another institution claims the same loan origination or loan purchase. The agencies proposed to revise this Q&A to add an example and to clarify that the guidance applies to all institutions, whether they are subject to the lending test, small institution examination standards, or the community development test applicable to wholesale or limited purpose institutions. Six commenters addressed these proposed revisions.

Two commenters supported the clarifications. Four commenters expressed concern that the new example appears to give ''double credit'' for one loan because the purchasing institution is an affiliate of the originator. Each financial institution that is subject to CRA is separately evaluated for its CRA performance, regardless of whether it has affiliates that are also institutions subject to the CRA. The CRA regulations provide that the agencies will consider both loan originations and loan purchases when evaluating an institution's CRA performance. To address commenters' concerns about sales of loans merely to inflate their value for CRA purposes, however, the agencies are adopting the revised Q&A with a new cross reference to Q&As § ____.22(c)(2)(ii)–1 and § ____.22(c)(2)(ii)–2. These Q&As provide that the manner in which loans are allocated among affiliated institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities, and should not be designed solely to enhance their CRA evaluations.

IX. *Retail banking services delivery systems.* The agencies proposed to revise Q&A § ____.24(d)–1, which explains how examiners evaluate the availability of an institution's systems for delivering retail banking services.

The proposed revision would conform the existing Q&A to more closely track the service test performance criteria in the regulations. The agencies received only one comment on the proposed revisions to this Q&A, which supported the clarifications to the Q&A. The agencies are adopting the revised Q&A as proposed.

X. *Assessment areas may not extend substantially beyond metropolitan statistical area (MSA) boundaries.* The agencies proposed to revise Q&As § ____.41(e)(4)–1 and § ____.41(e)(4)–2, which address the maximum size of an assessment area, to adopt the revised terminology in the Standards for Defining Metropolitan and Micropolitan Statistical Areas adopted by the Office of Management and Budget, and to incorporate guidance that the agencies provided in connection with the technical corrections made to the CRA regulations in 2005. *See* 70 FR 15570. The two comments on these proposed revisions supported adopting them. The agencies are adopting the revised Q&As as proposed.

XI. *Reporting data under the CRA regulations.* The agencies proposed to revise Q&A § ____.42–1, which addresses when an institution must collect and report data, to refer generally to the definition of a small institution, rather than to the current dollar amount of the asset threshold of such institutions, because the asset threshold is revised annually. The agencies also revised the mailing address in the Q&A. The agencies received no comments on these proposed revisions. The revised Q&A is being adopted as proposed.

XII. *Reporting home equity lines of credit for both home improvement and business purposes.* The agencies proposed to revise Q&A § ____.42(a)–7, which addresses the reporting of a home equity line of credit, used in part for home improvement purposes and used in part for small business purposes, to make the Q&A consistent with changes that were made to the Board's Regulation C requirements. The agencies received only one comment addressing the proposed revised Q&A in support of the proposed revision. The agencies are adopting the revised Q&A as proposed.

XIII. *Participations in small business or small farm loans.* The agencies proposed to revise Q&A § ____.42(a)(2)–1, which provides guidance regarding the reporting of the amount of a small business or small farm loan that an institution purchases, to clarify that the guidance also applies to purchases of small business or small farm loan participations. The agencies received five comments addressing this proposed revision. One commenter agreed that the reporting of loan participations purchased should be treated in the same manner as the reporting of whole loans purchased. The other four commenters addressed the inconsistency between the reporting requirements for small business and small farm loan purchases (either whole loans or participations in loans) and the reporting requirements for community development loan purchases (whole or partial). As discussed above, the CRA regulations at 12 CFR ____.42(a)(2) require the reporting of the loan amount at origination when reporting small business and small farm loan data. Thus, the agencies are adopting the revised Q&A as proposed.

Withdrawal of Proposed Revisions to Existing Q&A § ____.23(e)–2

Q&A § ____.23(e)–2 addresses how examiners evaluate an institution's qualified investment in a fund with a primary purpose of community development. The agencies proposed to revise the Q&A's discussion of consideration of legally binding commitments recorded by the institution according to GAAP. The agencies received two comments, both of which opposed the change. In response to these comments, and because the proposal was inconsistent with an interagency CRA interpretive letter published by the agencies in 1997 (OCC I.L. No. 800 (Sept. 11, 1997)), the agencies are withdrawing the proposal. Therefore, when evaluating a financial institution, examiners will continue to include in the dollar amount of qualified investments any legally binding commitments recorded by the institution according to GAAP.

Clarifying Revisions to Existing Q&As

Q&A § ____.12(g)–3

Three commenters addressed Q&A § ____.12(g)–3, which addresses flexibility in considering performance in high-cost areas. Q&A § ____.12(g)–3 provides an example of a situation when examiners could take into account the high cost of housing when an institution provides a community development loan or qualified investment to an organization that assists middle-income, as well as low- and moderate-income, people and areas. Even though the agencies had not proposed revisions to this existing guidance, after consideration of the comments, the agencies are revising this Q&A by adding a cross reference to Q&A § ____.12(h)–8, which provides information on ''primary purpose'' of community development.

Q&A § ____.12(g)(4)(i)–1

The agencies did not receive any comments directly mentioning Q&A § ____.12(g)(4)(i)–1. However, several commenters expressed their general support for the additional foreclosure prevention references that were proposed in other Q&As. Q&A § ____.12(g)(4)(i)–1 addresses activities that are considered to ''revitalize or stabilize'' a low- or moderate-income geography. Based on these comments, the following example has been added to the answer: ''For example, providing foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- and moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.''

OTS Request for Comments on Conforming Revisions

OTS specifically requested comment on several Q&As that it proposed to conform OTS guidance to guidance previously adopted by the OCC, Board, and FDIC. Five commenters addressed OTS's conforming revisions. They unanimously supported the efforts of OTS to be consistent with the other agencies. OTS is adopting the Q&As as proposed.

Revised and New Q&As Being Proposed for Comment

Proposed New Q&A: Community Services Targeted to Low- or Moderate-income Individuals

In response to suggestions made by commenters, the agencies are proposing a new Q&A that would provide examples of ways an institution, which provides community services, could determine that the community services are targeted to low- and moderate-income individuals when the institution does not know the actual income of the individuals. The text of the proposed Q&A follows:

►§ ____.12(g)(2)– 1: *Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

A1: Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include:

• The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving

low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.

• The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.

• The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.

• The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (*see, e.g., http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).◄

Proposed Revised Q&As: Primary Purpose of Community Development

As discussed above, a number of commenters suggested that loans or investments that provide some affordable housing to low- or moderate-income individuals should be considered as ''community development.'' The regulations require community development activities to have a ''primary purpose of community development.'' *See* 12 CFR____.12(h), ____.12(i), and .12(t).

Q&A § ____.12(h)–8 generally provides two methods of determining whether an activity has a primary purpose of community development: (1) If a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then an activity will be considered to possess the requisite primary purpose; and (2) If the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved, then the requisite primary purpose may be found.

The agencies have generally indicated that if an activity has a primary purpose of community development (determined by either method above), the entire investment, loan, or service would be considered in an institution's CRA evaluation. However, if an activity does not have a primary purpose of community development applying these standards, then it would not be considered as a qualified investment, community development loan, or community development service.

The agencies are proposing to revise Q&A § ____.12(h)–8 to allow consideration for an activity that provides some affordable housing targeted to low- or moderate-income individuals, but where it would not be deemed to have a primary purpose of community development measured by a majority of the entire activity's benefits or dollar value, or by relying on the express purpose of the activity. The Q&A would specifically allow activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, to be eligible for consideration as an activity that has a ''primary purpose'' of community development at the election of the institution. In those cases, an institution would receive pro rata consideration for the portion of the activity that helps to provide affordable housing to low- or moderate-income individuals.

The text of the proposed revised Q&A follows:

§ ____.12(h)—8: *What is meant by the term ''primary purpose'' as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?*

A8. A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in 12 CFR ____.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose►, and the institution may receive CRA consideration for the entire activity,◄ if (1) The express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

►Generally, a loan, investment, or service will be determined to have a ''primary purpose'' of community development only if it meets the criteria described above. However, an activity also may be deemed to have a ''primary purpose'' of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, also would be eligible for consideration as an activity that has a ''primary purpose'' of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a $10 million loan to finance a mixed-income housing development in which ten percent of the units will be set aside as affordable housing for low- and moderate-income individuals and ten percent of the funds will be used for the cost of constructing those units, the institution may elect to treat $1 million of such loan as a community development loan.◄

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities (under either approach) should be prepared to demonstrate the activities' qualifications.

Because this proposed revision would be a significant change to the agencies'

general ''all or nothing'' CRA consideration policy for community development loans, qualified investments, and community development services, the agencies solicit public comment on the proposed revision. We specifically request comment on the following:

• Will the proposed revision, allowing pro rata CRA consideration for low- and moderate-income housing set-asides, spur the construction and rehabilitation of housing for low- and moderate-income persons? Why or why not?

• Should the special pro rata consideration be restricted only to instances where a governmental entity requires a set aside of a certain number or percentage of units as housing affordable for low- or moderate-income housing (as opposed to voluntary designation of low- and moderate-income units by a developer)?

• How should the amount of the pro rata share be determined for reporting purposes—should institutions be required to report the actual funds attributable to the targeted units or should they report a proportional share, based on the percentage of set-aside units? For example, if an institution makes a $1 million loan for a development in which ten percent of the units are set aside as affordable housing for low- or moderate-income individuals, but only six percent of the loan proceeds are used to construct the units, should the intitution report ten percent of the total amount of the loan ($1 million) or six percent ($600,000)?

• Should the pro rata treatment apply only to affordable housing or should institutions also be able to receive pro rata treatment for loans or investments with other community development purposes?

• Would this change in policy lead to unjustifiable inflation of community development activities?

If the proposed revision to Q&A § ____.12(h)–8, above, is adopted, the agencies would also revise Q&A § ____.42(b)(2)–3 to address data collection and reporting of the pro rata share of the mixed-income housing loans described in the Q&A. If an institution were to elect to have the portion of mixed-income housing loans set aside for low- or moderate-income housing considered as community development loans, in order to receive consideration for such loans, the institution would need to collect and report data on only the portions of the loans that provide housing for low- or moderate-income individuals. The proposed revision to Q&A § ____.42(b)(2)–3 follows:

§ ____.42(b)(2)–3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. ►It depends.◄ As long as the primary purpose of the loan is a community development purpose ►as described in Q&A § ____.12 (h)–8◄, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. [However]►Even though the entire amount of the loan is reported◄, as noted in Q&A § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

►In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. See Q&A § ____.12(h)–8 for a discussion of ''primary purpose'' of community development describing the distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.◄

Finally, as previously discussed, if the proposed revision to Q&A § ____.12(h)–8 is adopted as final, Q&A § ____.22(a)(2)–4, which provides examples of ''other loan data,'' would be revised to delete ''loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing.''

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this guidance is not a proposed or final rule, comments are nevertheless invited on whether the interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

The text of the final Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, purposes, and scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 563e.11(c)(2) Certain special purpose institutions

§§ ____.11(c)(3) & 563e.11(c)(2)–1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ____.11(c)(3) & 563e.11(c)(2)–2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)–1: *Does the definition of ''affiliate'' include subsidiaries of an institution?*

A1. Yes, ''affiliate'' includes any company that controls, is controlled by, or is under common control with another company. An institution's

subsidiary is controlled by the institution and is, therefore, an affiliate.

§ ____.12(f) Branch

§ ____.12(f)–1: *Do the definitions of ''branch,'' ''automated teller machine (ATM),'' and ''remote service facility (RSF)'' include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered ''branches,'' and mobile ATMs and RSFs are considered ''ATMs'' and ''RSFs.''

§ ____.12(f)–2: *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not ''branches'' unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§ ____.12(g) Community development

§ ____.12(g)–1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of ''community development'' includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ ____.12(g)–2: *Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ ____.12(g)–3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § ____.12(h)–8 for more information on ''primary purpose.''

§ ____.12(g)–4: *The CRA provides that, in assessing the CRA performance of non-minority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution's assessment area?*

A4. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include:

- Making a deposit or capital investment;
- Purchasing a participation in a loan;
- Loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- Providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- Providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

§ ____.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-income Individuals

§ ____.12(g)(1)–1: *When determining whether a project is ''affordable housing for low- or moderate-income individuals,'' thereby meeting the definition of ''community development,'' will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of ''affordable housing'' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or

housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ ____.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.12(g)(3)–1: *''Community development'' includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. The concept of ''community development'' under 12 CFR____.12(g)(3) involves both a ''size'' test and a ''purpose'' test. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly or through an intermediary, entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less.

To meet the ''purpose test,'' the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments. The agencies will presume that any loan to or investment in an SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development. (But also refer to Q&As § ____.42(b)(2)–2, § ____.12(h)–2, and § ____.12(h)–3 for more information about which loans may be considered community development loans.)

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the same geography that does not directly provide additional jobs or services to the community.

§ ____.12(g)(4) Activities That Revitalize or Stabilize Certain Geographies

§ ____.12(g)(4)–1: *Is the revised definition of community development, effective September 1, 2005 (under the OCC, Board, and FDIC rules) and effective April 12, 2006 (under OTS's rule), applicable to all institutions or only to intermediate small institutions?*

A1. The revised definition of community development is applicable to all institutions. Examiners will not use the revised definition to qualify activities that were funded or provided prior to September 1, 2005 (under the OCC, Board, and FDIC rules) or prior to April 12, 2006 (under OTS's rule).

§ ____.12(g)(4)–2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (Except in connection with intermediate small institutions, a housing-related loan is not evaluated as a ''community development loan'' if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. *See* 12 CFR____.12(h)(2)(i) and Q&As § ____.12(h)–2 and § ____.12(h)–3.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ ____.12(g)(4)(i) Activities That Revitalize or Stabilize Low- or Moderate-income Geographies

§ ____.12(g)(4)(i)–1: *What activities are considered to ''revitalize or stabilize'' a low- or moderate-income geography, and how are those activities considered?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract new, or retain existing, businesses or residents. Examiners will

presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. For example, foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- or moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.

To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see Q&As § ____.12(g)–2 and § ____.12(h)–5.

§ ____.12(g)(4)(ii) Activities That Revitalize or Stabilize Designated Disaster Areas

§ ____.12(g)(4)(ii)–1: *What is a ''designated disaster area'' and how long does it last?*

A1. A ''designated disaster area'' is a major disaster area designated by the federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ ____.12(g)(4)(ii)–2: *What activities are considered to ''revitalize or stabilize'' a designated disaster area, and how are those activities considered?*

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (*see, e.g.*, Q&As § ____.12(i)–3; § ____.12(t)–4; § ____.22(b)(2) & (3)–4; § ____.22(b)(2) & (3)–5; and § ____.24(d)(3)–1).

§ ____.12(g)(4)(iii) Activities That Revitalize or Stabilize Distressed or Underserved Nonmetropolitan Middle-income Geographies

§ ____.12(g)(4)(iii)–1: *What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?*

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in 12 CFR ____.12(k), a geography is a census tract delineated by the United States Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the United States Department of Agriculture.

The Agencies publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

§ ____.12(g)(4)(iii)–2: *How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?*

A2. The Agencies will review and update the list annually. The list is published on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year ''lag period.'' This lag period will be in effect for the twelve months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ ____.12(g)(4)(iii)–3: *What activities are considered to ''revitalize or stabilize'' a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?*

A3. An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will

be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

§ ____.12(g)(4)(iii)–4: *What activities are considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income geography, and how are those activities evaluated?*

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be a new or expanded hospital that serves the entire county, including low- and moderate-income residents; an industrial park for businesses whose employees include low- or moderate-income individuals; a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents; a mixed-income housing development that includes affordable housing for low- and moderate-income families; or a renovated elementary school that serves children from the community, including children from low- and moderate-income families.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § ____.12(g)(4)(ii)–2 and § ____.12(g)(4)(iii)–3.

§ ____.12(h) Community Development Loan

§ ____.12(h)–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;
- Local, state, and tribal governments for community development activities;
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located; and
- Businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

§ ____.12(h)–2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under the CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans, unless the small institution is an intermediate small institution (*see* § ____.12(h)–3). Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A § ____.42(b)(2)–2.

§ ____.12(h)–3: *May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?*

A3. Yes. In instances where intermediate small institutions are not required to report HMDA or small business or small farm loans, these loans may be considered, at the institution's option, as community development loans, provided they meet the regulatory definition of ''community development.'' If small business or small farm loan data have been reported to the agencies to preserve the option to be evaluated as a large institution, but the institution ultimately chooses to be evaluated under the intermediate small institution examination standards, then the institution would continue to have the option to have such loans considered as community development

loans. However, if the institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions, it may not choose to have home mortgage, small business, small farm, or consumer loans considered as community development loans.

Loans other than multifamily dwelling loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects to have certain loans considered under the community development test, those loans may not also be considered under the lending test, and would be excluded from the lending test analysis.

Intermediate small institutions may choose individual loans within their portfolio for community development consideration. Examiners will evaluate an intermediate small institution's community development activities within the context of the responsiveness of the activity to the community development needs of the institution's assessment area.

§ ____.12(h)–4: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A4. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of ''community development.''

§ ____.12(h)–5: *The regulation indicates that community development includes ''activities that revitalize or stabilize low- or moderate-income geographies.'' Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A5. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a low- or moderate-income area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a low- or moderate-income area (or a nearby area) that employs or serves residents of the area and, thus, stabilizes the area, may be considered to have a community development purpose. For example, in a low-income area, a loan for a pharmacy that employs and serves residents of the area promotes community development.

§ ____.12(h)–6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§ ____.12(h)–7: *What is meant by the term ''regional area''?*

A7. A ''regional area'' may be as large as a multistate area. For example, the ''mid-Atlantic states'' may comprise a regional area.

Community development loans and services and qualified investments to statewide or regional organizations that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.

In addition, as long as an institution has adequately addressed the community development needs of its assessment area(s), it will also receive consideration for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

§ ____.12(h)–8: *What is meant by the term ''primary purpose'' as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A8. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in 12 CFR ____.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) The express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development

purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§ ____.12(i) Community Development Service

§ ____.12(i)–1: *In addition to meeting the definition of ''community development'' in the regulation, community development services must also be related to the provision of financial services. What is meant by ''provision of financial services''?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§ ____.12(i)–2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§ ____.12(i)–3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of an institution's retail banking services under 12 CFR ____.24(d);
- Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d);
- Providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;
- Establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals;
- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;
- Providing international remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account);
- Providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including ''Electronic Transfer Accounts'' provided pursuant to the Debt Collection Improvement Act of 1996, individual development accounts (IDAs), or free or low-cost government, payroll, or other check cashing services, that increase access to financial services for low- or moderate-income individuals; and
- Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;
- Developing loan application and underwriting standards;
- Developing loan processing systems;
- Developing secondary market vehicles or programs;
- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

§ ____.12(j) Consumer Loan

§ ____.12(j)–1: *Are home equity loans considered ''consumer loans''?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ ____.12(j)–2: *May a home equity line of credit be considered a ''consumer loan'' even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan.

However, the full amount of the line may be considered a ''consumer loan'' if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be ''double counting'' because part of the line may also have been reported under HMDA.

§ ____.12(j)–3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(l) Home Mortgage Loan

§ ____.12(l)–1: *Does the term ''home mortgage loan'' include loans other than ''home purchase loans''?*

A1. Yes. ''Home mortgage loan'' includes ''home improvement loan,'' ''home purchase loan,'' and ''refinancing,'' as defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, and loans for the purchase of manufactured homes. *See also* Q&A § ____.22(a)(2)–7.

§ ____.12(l)–2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as ''other loan data.'' Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider these other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(m) Income Level

§ ____.12(m)–1: *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for *geographies*, i.e., census tracts, are derived from Census Bureau information and are updated approximately every ten years. The income levels for *individuals* are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually.

Institutions may obtain 2000 geography income information and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by accessing the Federal Financial Institution Examination Council's (FFIEC's) Web site at *http://www.ffiec.gov/cra* or by calling the FFIEC's CRA Assistance Line at (202) 872–7584.

§ ____.12(n) Limited Purpose Institution

§ ____.12(n)–1: *What constitutes a ''narrow product line'' in the definition of ''limited purpose institution''?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ ____.12(n)–2: *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental *and* done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the retail lending provided as an incident to the institution's wholesale lending?
- Are the retail loans provided as an accommodation to the institution's wholesale customers?
- Are the other types of loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§ ____.12(n)–3: *Do ''niche institutions'' qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) (''niche institutions'') generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(t) Qualified Investment

§ ____.12(t)–1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§ ____.12(t)–2: *Are mortgage-backed securities or municipal bonds ''qualified investments''?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. *See* Q&A § ____.12(g)(4)(iii)–4. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs of low- or moderate-income individuals in order to qualify. *See also* Q&A § ____.23(b)–2.

§ ____.12(t)–3: *Are Federal Home Loan Bank stocks or unpaid dividends and membership reserves with the Federal Reserve Banks ''qualified investments''?*

A3. No. Federal Home Loan Bank (FHLB) stocks or unpaid dividends, and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration as a community development service for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A § ____.12(i)–3.

§ ____.12(t)–4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

- Financial intermediaries (including Community Development Financial Institutions (CDFIs), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs) that promote economic development by financing small businesses;
- Community development venture capital companies that promote economic development by financing small businesses;
- Facilities that promote community development by providing community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial literacy programs; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable low- or moderate-income individuals to work.

See also Q&As § ____.12(g)(4)(ii)–2; § ____.12(g)(4)(iii)–3; § ____.12(g)(4)(iii)–4.

§ ____.12(t)–5: *Will an institution receive consideration for charitable contributions as ''qualified investments''?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term ''grant.'' A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§ ____.12(t)–6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or ''bought down'' the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the responsiveness, innovativeness, and complexity of the community development loan within the bounds of safe and sound banking practices.

§ ____.12(t)–7: *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution as a community development service if the activity meets the regulatory definition of ''community development service.''

§ ____.12(t)–8: *When evaluating a qualified investment, what consideration will be given for prior-period investments?*

A8. When evaluating an institution's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weighting given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§ ____.12(u) Small Institution

§ ____.12(u)–1: *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A1. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has assets less than the asset threshold delineated in 12 CFR ____.12(u)(1) for small institutions.

§ ____.12(u)(2) Small Institution Adjustment

§ ____.12(u)(2)–1: *How often will the asset size thresholds for small institutions and intermediate small*

institutions be changed, and how will these adjustments be communicated?

A1. The asset size thresholds for ''small institutions'' and ''intermediate small institutions'' will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each twelve-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the **Federal Register**. Historical and current asset-size threshold information may be found on the FFIEC's Web site at *http://www.ffiec.gov/cra.*

§ .12(v) Small Business Loan

§ .12(v)–1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of ''loan to small business'' in the instructions in the ''Consolidated Reports of Conditions and Income'' (Call Report) and ''Thrift Financial Report'' (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition of ''community development.''

§ .12(v)–2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by ''nonfarm nonresidential properties,'' as defined in the Call Report and TFR, in amounts of $1 million or less.

§ .12(v)–3: *Are loans secured by nonfarm residential real estate to finance small businesses ''small business loans''?*

A3. *Applicable to banks filing Call Reports:* Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as ''small business'' loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of ''Loan Secured by Real Estate.'') The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as ''Other Secured Lines/Loans for Purposes of Small Business.'' *See also* Q&A § ____.22(a)(2)–7.

Applicable to institutions that file TFRs: Possibly, depending how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage, commercial loans. (*See* TFR Q&A No. 62.) Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans.

§ .12(v)–4: *Are credit cards issued to small businesses considered ''small business loans''?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§ ____.12(x) Wholesale Institution

§ ____.12(x)–1: *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations, including off-balance sheet activities.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A § ____.12(n)–2.

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

§ ____.21(a)–1: *How will examiners apply the performance criteria?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.21(a)–2: *Are all community development activities weighted equally by examiners?*

A2. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. (''Innovativeness'' and ''complexity'' are not factors in the community development test applicable to intermediate small institutions.)

§ ____.21(b) Performance Context

§ ____.21(b)–1: *What is the performance context?*

A1. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with some of this information. The performance context is not a formal assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

§ ____.21(b)(2)–1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s).

This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a formal needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)–2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies may consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies may share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

§ ____.21(b)(4)–1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

§ ____.21(b)(5)–1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of ''needs to improve'' in the past may receive a rating of ''substantial noncompliance'' if its performance has not improved.

§ ____.21(b)(5)—2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)–1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (*i.e.*, based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products;
- Establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the small, intermediate small, or large institution's lending programs.

§ ____.22(a)(1) Types of Loans Considered

§ ____.22(a)(1)–1: *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)–2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects and has collected and maintained the data; an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret ''substantial majority'' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

§ ____.22(a)(2)–1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution,

regardless of examination type. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance, but will be evaluated separately from the loans.

§ ____.22(a)(2)–2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)–3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECAs), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR part 203?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as ''other loan data.''

§ ____.22(a)(2)–4: *In addition to MECAs, what are other examples of ''other loan data''?*

A4. Other loan data include, for example:

- Loans funded for sale to the secondary markets that an institution has not reported under HMDA;
- Unfunded loan commitments and letters of credit;
- Commercial and consumer leases;
- Loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA;
- Loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing; and
- An increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line.

§ ____.22(a)(2)–5: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A5. Yes. For all examination types, examiners evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. Examiners do not take into account whether or not such loans are guaranteed.

§ ____.22(a)(2)–6: *Do institutions receive consideration for purchasing loan participations?*

A6. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. As with other loan purchases, examiners will evaluate whether participations in loan purchased, which have been sold and purchased a number of times, artificially inflate CRA performance. *See, e.g.*, § ____.21(a)–1.

§ ____.22(a)(2)–7: *How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?*

A7. *For banks subject to the Call Report instructions:* A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (*See* Call Report Glossary definition of ''Loan Secured by Real Estate.'') If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that ''double-reported'' loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the ''double-reported'' loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as ''other loan data'' (''Other Secured Lines/Loans for Purposes of Small Business'') for consideration during a CRA evaluation. *See* Q&A § ____.12(v)–3. The refinancings of such loans *would be* reported under HMDA.

For savings associations subject to the Thrift Financial Reporting instructions: A loan of $1 million or less with a business purpose secured by a one-to-four family residence is considered a small business loan for CRA purposes if it is reported as a small business loan for TFR purposes and was not reported on the TFR as a mortgage loan (TFR Instructions for Commercial Loans: Secured). If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, and was not reported for TFR purposes as a mortgage loan, this loan is reported not only as a refinancing for HMDA, but is also reported as a small business loan under the TFR and CRA. The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as small business or small farm if it was reported as a mortgage on the TFR report.

OTS does not anticipate that ''double-reported'' loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the ''double-reported'' loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence should be reported in accordance with Q&A § ____.12(v)–3. The refinancings of such loans *would be* reported under HMDA.

§ ____.22(b) Performance Criteria

§ ____.22(b)(1) Lending Activity

§ ____.22(b)(1)–1: *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

§ ____.22(b)(2) & (3)–1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test applicable to either large or small institutions?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels, and among borrowers of different income levels and businesses and farms of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)–2: *Must an institution lend to all portions of its assessment area?*

A2. The term ''assessment area'' describes the geographic area within which the agencies assess how well an institution, regardless of examination type, has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract is within an institution's assessment area(s), the institution must lend to that census tract. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)–3: *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)–4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small and intermediate small institutions being evaluated under their respective performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)–5: *Under the lending test applicable to small, intermediate small, or large institutions, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community Development Lending

§ ____.22(b)(4)–1: *When evaluating an institution's record of community development lending under the lending test applicable to large institutions, may*

an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?

A1. Yes. When evaluating the institution's record of community development lending under 12 CFR ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the 12 CFR ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under 12 CFR ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

§ ____.22(b)(5)–1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

§ ____.22(c)(1)–1: *If an institution, regardless of examination type, elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

§ ____.22(c)(2)(i)–1: *Regardless of examination type, how is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. For example, assume that two institutions are affiliated. Bank A originates a loan and claims it as a loan origination. Bank B later purchases the loan. Bank B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate. *See also* Q&As § ____.22(c)(2)(ii)–1 and § ____.22(c)(2)(ii)–2.

§ ____.22(c)(2)(ii) If an Institution Elects To Have Its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect To Have the Agency Consider All Loans Within That Lending Category in That Particular Assessment Area Made by All of the Institution's Affiliates

§ ____.22(c)(2)(ii)–1: *Regardless of examination type, how is this constraint on affiliate lending applied?*

A1. This constraint prohibits ''cherry-picking'' affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has several affiliates, including a mortgage company that makes loans in the institution's assessment area. If the institution elects to include the mortgage company's home mortgage loans, it must include all of its affiliates' home mortgage loans made in its assessment area. In addition, the institution cannot elect to include

only those low- and moderate-income home mortgage loans made by its affiliates and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)–2: *Regardless of examination type, how is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against ''cherry-picking'' to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

§ ____.22(d)–1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation (''CDC'') that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A § ____.23(b)–1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests. (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro-rata shares of community development loans, are considered only in the community development test.)

§ ____.22(d)–2: *Regardless of examination type, how will examiners evaluate loans made by consortia or third parties?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will be considered only if they qualify as community development loans and will be considered only under the community development criterion. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under the lending test or community development test criteria appropriate to them depending on the type of loan and type of examination.

§ ____.22(d)–3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, regardless of examination type, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

§ ____.23(a)–1: *May an institution, regardless of examination type, receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between ''direct'' and ''indirect'' investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(a)–2: *In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A2. There are several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

As an initial matter, in making this determination, the agencies would consider whether the purpose, mandate, or function of the fund includes serving

geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation. At the institution's option, written documentation provided by fund managers in connection with the institution's investment indicating that the fund will use its best efforts to invest in a qualifying activity that meets the institution's geographic requirements also may be used for these purposes. Similarly, at the institution's option, information that a fund has explicitly earmarked its projects or investments to its investors and their specific assessment area(s) or broader statewide or regional areas that include the assessment area(s) also may be used for these purposes. (If any documentation that has been provided at the institution's option as described above clearly indicates that the fund ''double-counts'' investments, by earmarking the same dollars or the same portions of projects or investments in a particular geography to more than one investor, the investment may be determined not to meet the geographic requirements of the CRA regulations.) In addition, at the institution's option, an allocation method may be used to permit the institution to claim a pro-rata share of each project of the fund.

Nationwide funds are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. *See also* Q&As § ____.12(h)–6 and § ____12(h)–7 (additional information about recognition of investments benefiting an area outside an institution's assessment area(s)).

§ ____.23(b) Exclusion

§ ____.23(b)–1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming its pro rata share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would receive consideration under the investment test for only the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(b)–2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance Criteria

§ ____.23(e)–1: *When applying the four performance criteria of 12 CFR ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit an examiner to qualitatively weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Performance Evaluation. *See* also Q&A § ____.12(t)–8 for a discussion about the qualitative consideration of prior period investments.

§ ____.23(e)–2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP).

Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(d) Performance criteria—Retail Banking Services

§ ____.24(d)–1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines (''ATMs''). The principal focus is on an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)–2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: Community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. *See, e.g.*, Q&A § ____.12(i)–3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

§ ____.24(d)(3)–1: *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals. The list of systems in the regulation is not intended to be comprehensive.

§ ____.24(d)(3)–2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(e) Performance Criteria–Community Development Services

§ ____.24(e)–1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test (*see* Q&A § ____.23(b)–1). For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. *See* 12 CFR ____.22(c) and ____.23(c).

§ ____.25 Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(a) Scope of Test

§ ____.25(a)–1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of ''bank'' in the Bank Holding Company Act (the BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHC Act and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under 12 CFR ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in 12 CFR ____.21(b)(4).

§ ____.25(d) Indirect Activities

§ ____.25(d)–1: *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding 12 CFR ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

§ ____.25(e)–1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

§ ____.25(f)–1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26–1: *When evaluating a small or intermediate small institution's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?*

A1. Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. *See* Q&As addressing 12 CFR ____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in an institution's assessment area.

§ ____.26(a) Performance Criteria

§ ____.26(a)(2) Intermediate Small Institutions

§ ____.26(a)(2)–1: *When is an institution examined as an intermediate small institution?*

A1. When a small institution has met the intermediate small institution asset threshold delineated in 12 CFR ____.12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.

§ ____.26(b) Lending Test

§ ____.26(b)–1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider ''lending-related activities,'' including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR ____.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area analysis (12 CFR ____.26(b)(2)), if appropriate.

§ ____.26(b)–2: *What is meant by ''as appropriate'' when referring to the fact that lending-related activities will be considered, ''as appropriate,'' under the various small institution performance criteria?*

A2. ''As appropriate'' means that lending-related activities will be considered when it is necessary to determine whether an institution meets

or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request, provided they have not also been considered under the community development test applicable to intermediate small institutions.

§ ____.26(b)–3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(b)–4: *Under the small institution lending test performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ ____.26(b)–5: *Under the small institution lending test performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purpose of determining whether a small institution that is not an intermediate small institution receives a satisfactory CRA rating.

§ ____.26(b)(1) Loan-to-Deposit Ratio

§ ____.26(b)(1)–1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(b)(1)–2: *How is the ''reasonableness'' of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(b)(1)–3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(b)(2) Percentage of Lending Within Assessment Area(s)

§ ____.26(b)(2)–1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions; loan demand; the institution's size, financial condition, business strategies, and branching network; and other aspects of the institution's lending record.

§ ____.26(b)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

§ ____.26(b)(3) & (4)–1: *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with very few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use loan size as a proxy for estimating borrower characteristics, where appropriate.

§ ____.26(c) Intermediate Small Institution Community Development Test

§ ____.26(c)–1: *How will the community development test be applied flexibly for intermediate small institutions?*

A1. Generally, intermediate small institutions engage in a combination of community development loans, qualified investments, and community development services. An institution may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the institution's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the institution's capacity.

An intermediate small institution has the flexibility to allocate its resources among community development loans,

qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities for community development.

§ ____.26(c)(3) Community Development Services

§ ____.26(c)(3)–1: *What will examiners consider when evaluating the provision of community development services by an intermediate small institution?*

A1. Examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, such as low-cost checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ ____.26(c)(4) Responsiveness to Community Development Needs

§ ____.26(c)(4)–1: *When evaluating an intermediate small institution's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?*

A1. When evaluating an intermediate small institution's community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the institution's community development activities in light of the institution's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the institution's activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: the volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, ''innovativeness'' and ''complexity,'' factors examiners consider when evaluating a large institution under the lending, investment, and service tests, are not criteria in the intermediate small institutions' community development test.) In some cases, a smaller loan may have more qualitative benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§ ____.26(d) Performance Rating

§ ____.26(d)–1: *How can a small institution that is not an intermediate small institution achieve an ''outstanding'' performance rating?*

A1. A small institution that is not an intermediate small institution that meets each of the standards in the lending test for a ''satisfactory'' rating and exceeds some or all of those standards may warrant an ''outstanding'' performance rating. In assessing performance at the ''outstanding'' level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an ''outstanding'' performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a ''satisfactory'' rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated ''outstanding'' based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated ''outstanding.''

§ ____.26(d)–2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&As § ____.12(h)–6 and § ____.12(h)–7.

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

§ ____.27(c)–1: *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)–2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

§ ____.27(f)(1)–1: *How should annual measurable goals be specified in a strategic plan?*

A1. Annual measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

§ ____.27(g)(2)–1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

§ ____.28–1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a ''satisfactory'' or ''outstanding'' CRA rating?*

A1. No. The performance criterion of ''innovativeness'' applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions. Moreover, even under these tests, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a ''needs to improve'' CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating. See also Q&A § ____.26(c)(4)–1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions.

§ ____.28(a) Ratings in General

§ ____.28(a)–1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state (''multistate institution'') will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

§ ____.28(a)–2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state (''single-state institution'') will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)–3: *How do the agencies weight performance under the lending, investment, and service tests for large retail institutions?*

A3. A rating of ''outstanding,'' ''high satisfactory,'' ''low satisfactory,'' ''needs to improve,'' or ''substantial noncompliance,'' based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment, and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT, AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs To Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.

COMPOSITE RATING POINT REQUIREMENTS—Continued

[Add points from three tests]

Rating	Total points
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of ''satisfactory'' unless it receives at least ''low satisfactory'' on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.28(b) Lending, Investment, and Service Test Ratings

§ ____.28(b)–1: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A1. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(c) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

§ ____.28(c)–1: *What is meant by ''discriminatory or other illegal credit practices''?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

§ ____.29(a)–1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In reviewing applications in which CRA performance is a relevant factor, information from a CRA examination of the institution is a particularly important consideration. The examination is a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent, or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)–2: *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

§ ____.29(b)–1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the application process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decisions. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

§ ____.29(b)–2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of

its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The agencies do not monitor compliance with nor enforce these agreements.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

§ ____.41(a)–1: *How do the agencies evaluate ''assessment areas'' under the CRA regulations?*

A1. The rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

§ ____.41(a)–2: *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)–3: *Can a financial institution identify a specific racial or ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography. The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.

§ ____.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of One or More MSAs or Metropolitan Divisions or One or More Contiguous Political Subdivisions

§ ____.41(c)(1)–1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts (''geographies'') in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)–2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town, or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with 12 CFR ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low-or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

§ ____.41(d)–1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts) in their assessment areas and generally should include entire political subdivisions. Because census tracts are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May Not Arbitrarily Exclude Low- or Moderate-Income Geographies

§ ____.41(e)(3)–1: *How will examiners determine whether an institution has arbitrarily excluded low-or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond an MSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

§ ____.41(e)(4)–1: *What are the maximum limits on the size of an assessment area?*

A1. An institution may not delineate an assessment area extending substantially across the boundaries of an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.

An assessment area also may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within an MSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution must delineate separate assessment areas for the areas inside and outside an MSA if the area served by the institution's branches outside the MSA extends substantially beyond the MSA boundary. Similarly, the institution must delineate separate assessment areas for the areas inside

and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§____.41(e)(4)–2: *May an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area, assuming branches or deposit-taking ATMs are located in each county and the MSA. So, in this example, there would be three assessment areas. However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.

§____.42—Data Collection, Reporting, and Disclosure

§____.42–1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. (''Small institution'' is defined in the agencies' CRA regulations at §____.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at *http://www.ffiec.gov/cra.* All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year.

The Board of Governors of the Federal Reserve System processes the reports for all of the primary regulators. Data may be submitted on diskette, CD–ROM, or via Internet e-mail. CRA respondents are encouraged to send their data via the Internet. E-mail a properly encrypted CRA file (using the FFIEC software only Internet e-mail export feature) to the following e-mail address: *crasub@frb.gov*. Please mail diskette or CD–ROM submissions to: Board of Governors of the Federal Reserve System, Attention: CRA Processing, 20th & Constitution Avenue, NW., MS N502, Washington, DC 20551–0001.

§____.42–2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact the CRA Assistance Line at (202) 872–7584 or click on ''How to File'' at *http://www.ffiec.gov/cra.*

§____.42–3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report and TFR instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as ''other loan data.''

§____.42–4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm, consumer, or community development purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* Q&A §__.42(a)–5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 203.

§____.42–5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets at least equal to the small institution asset-size threshold amount described in 12 CFR ____.12(u)(1).
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§____.42–6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may download it from the FFIEC Web site at *http://www.ffiec.gov/cra*. For assistance, institutions may call the CRA Assistance Line at (202) 872–7584 or send an e-mail to *CRAHELP@FRB.GOV*.

§____.42–7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions that are designated as wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be

evaluated under the community development test.

§____.42(a) Loan Information Required To Be Collected and Maintained

§____.42(a)–1: *Must institutions collect and report data on all commercial loans of $1 million or less at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either ''Loans secured by nonfarm or nonresidential real estate'' or ''Commercial and Industrial loans'' in Part I of the Call Report or TFR.

§____.42(a)–2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain, in a standardized, machine-readable format, information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination;
- The loan location; and
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§____.42(a)–3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§____.42(a)–4: *Should institutions collect and report data on all agricultural loans of $500,000 or less at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either ''Loans to finance agricultural production and other loans to farmers'' or ''Loans secured by farmland'' in Part I of the Call Report or TFR.

§____.42(a)–5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is not necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§____.42(a)–6: *Does a loan to the ''fishing industry'' come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans ''made for the purpose of financing fisheries and forestries, including loans to commercial fishermen'' as a component of the definition for ''Loans to finance agricultural production and other loans to farmers.'' Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the regulation, capture both ''Loans to finance agricultural production and other loans to farmers'' and ''Loans secured by farmland.''

§____.42(a)–7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes?*

A7. When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the institution has the option of reporting the portion of the home equity line that is for home improvement purposes as a home improvement loan under HMDA. Examiners would consider that portion of the line when they evaluate the institution's home mortgage lending. When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.

If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a home improvement loan (or a refinancing) under HMDA, and if the line meets the regulatory definition of a ''community development loan,'' the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as ''Other Secured Lines/Loans for Purposes of Small Business.''

§____.42(a)–8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§____.42(a)–9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to

report, the record should be sent with ''0'' in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)–10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices and Bank Secrecy Act regulations dictate that institutions know the location of their customers and loan collateral. Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number, the institution knows the location (i.e., the census tract) of the borrower or loan collateral. Once the institution has this information available, it should assign the census tract to that location (geocode) and report that information as required under the regulation.

However, if an institution cannot determine a rural borrower's street address, and does not know the census tract, the institution should report the borrower's state, county, MSA or metropolitan division, if applicable, and ''NA,'' for ''not available,'' in lieu of a census tract code.

§ ____.42(a)(2) Loan Amount at Origination

§ ____.42(a)(2)–1: *When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the ''original amount of the loan'' to determine whether a loan should be reported as a ''loan to a small business'' or a ''loan to a small farm'' and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)–2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)–3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business's employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the ''small business loan'' definition in the regulation are met. The credit card program's ''amount at origination'' is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

§ ____.42(a)(3)–1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

§ ____.42(a)(4)–1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)–2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating ''revenues not known'' on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)–3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue and, therefore, should not be used.

§ ____.42(a)(4)–4: *When indicating the gross annual revenue of small business or small farm borrowers, do institutions rely on the gross annual revenue or the adjusted gross annual revenue of their borrowers?*

A4. Institutions rely on the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or small farm borrowers when indicating the revenue of small business

or small farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and small farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and rely upon the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution should enter the code ''revenues not known.'' (*See* Q&A § ____.42(a)(4)–2.)

§____.42(b) Loan Information Required To Be Reported

§____.42(b)(1) Small Business and Small Farm Loan Data

§ ____.42(b)(1)–1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

§ ____.42(b)(2)–1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)–2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definition of ''home mortgage loan,'' ''small business loan,'' or ''small farm loan'' only in those respective categories even if they also meet the definition of ''community development loan.'' As a practical matter, this is not a disadvantage for institutions evaluated under the lending, investment, and service tests because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of ''community development loan'' will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A § ____.22(b)(2) & (3)–4.

Limited purpose and wholesale institutions that meet the size threshold for reporting purposes also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories. However, these institutions must also report any loans from those categories that meet the regulatory definition of ''community development loan'' as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm, and consumer loans.

§ ____.42(b)(2)–3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in Q&A § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

§ ____.42(b)(2)–4: *When an institution purchases a participation in a community development loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?*

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a ''loan to a small business,'' ''loan to a small farm,'' or ''community development loan.'' For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.

§ ____.42(b)(2)–5: *Should institutions collect and report data about community development loans that are refinanced or renewed?*

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. *See* Q&A § ____.42(a)–5.

§ ____.42(b)(3) Home Mortgage Loans

§ ____.42(b)(3)–1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample

these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

§ ____.42(c)(1)–1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

§ ____.42(c)(1)(iv)–1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)–2: *May an institution list ''0'' in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)–3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(1)(iv)–4: *Whose income does an institution collect when a consumer loan is made to more than one borrower*?

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other Loan Data

§ ____.42(c)(2)–1: *Schedule RC–C, Part II of the Call Report does not allow banks to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (See Q&A § ____.12(v)–3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May a bank collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the bank should collect and report information about the loans as community development loans. Otherwise, at the bank's option, it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. A bank may collect this information as ''Other Secured Lines/Loans for Purposes of Small Business'' in the individual loan data. This information should be maintained at the bank but should not be submitted for central reporting purposes.

§ ____.42(c)(2)–2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)–3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as ''other loan data'' under 12 CFR____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on Affiliate Lending

§ ____.42(d)–1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may provide examiners with either the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments Related to an Institution's CRA Performance

§ ____.43(a)(1)–1: *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)–2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (12 CFR____ .26(b)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(2) CRA Performance Evaluation

§ ____.43(a)(2)–1: *May an institution include a response to its CRA performance evaluation in its public file?*

A1. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. *See* 12 CFR____ .43(b)(5). The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

§ ____.43(b)(1)–1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)–2: *May an institution retain its CRA disclosure statement in electronic format in its public file, rather than printing a hard copy of the CRA disclosure statement for retention in its public file?*

A2. Yes, if the institution can readily print out its CRA disclosure statement from an electronic medium (*e.g.*, CD, DVD, or Internet Web site) when a consumer requests the public file. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the institution should provide the CRA disclosure statement in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by 12 CFR____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

§ ____.43(c)–1: *What is an institution's ''main office''?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)–2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in 12 CFR____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____ .44—Public Notice by Institutions

§ ____.44–1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

§ ____.45–1: *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

§ ____.45–2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part____—Ratings

Appendix A to Part____–1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution other than an intermediate small institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's

assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part ____—CRA Notice

Appendix B to Part ____–1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: For community banks, the address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at *http://www.occ.gov.* For banks supervised under the large bank program, insert ''Large Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001.'' For banks supervised under the mid-size/credit card bank program, insert ''Mid-Size and Credit Card Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001.''

OCC-, FDIC-, and Board-supervised institutions: ''Officer in Charge of Supervision'' is the title of the responsible official at the appropriate Federal Reserve Bank.

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End of text of the Interagency Questions and Answers

Dated: December 9, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, December 19, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 23rd day of December 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 11, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–31116 Filed 1–5–09; 8:45 am]

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2006–0035]

RIN 0584–AD47

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) by adding three requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004 in amendments to the Child Nutrition Act of 1966 (CNA) concerning retail vendors authorized by WIC State agencies to provide supplemental food to WIC participants in exchange for WIC food instruments. The intent of these provisions is to enhance due process for vendors; prevent defective infant formula from being consumed by infant WIC participants; and ensure that the WIC Program does not pay the cost of incentive items provided by above-50-percent vendors in the form of high food prices. Finally, this rule also adjusts the vendor civil money penalty (CMP) levels to reflect inflation.

DATES: This rule is effective March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis Summary

The following summarizes the conclusions of the regulatory impact analysis. A complete copy of the Impact Analysis appears in the appendix to this rule.

Need for Action

This rule amends the WIC regulations by adding three requirements mandated by the CNA concerning WIC-authorized retail vendors, as discussed below. This rule also establishes a process for the periodic adjustment (at least once every four years) of all vendor civil money penalty (CMP) levels to reflect inflation; under the current regulations, the CMP levels for some but not all vendor violations have been previously adjusted for inflation. Initially, this would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation.

Benefits

The notification of vendors of an initial incidence of a violation, one of the new requirements based on the 2004 reauthorization legislation, provides the vendor with an opportunity to correct a violation. Thus, State agencies may spend less time and resources on sanction cases and ultimately program operations would be improved and program costs would decrease. Requiring vendors to obtain infant formula only from suppliers registered with FDA or licensed under State law, another requirement based on the 2004 reauthorization legislation, will help to prevent the sale of adulterated stolen infant formula for use by infant WIC participants, thus safeguarding their health.

Requiring above-50-percent vendors to restrict the costs of their participant incentive items to nominal value, the last of the requirements based on the 2004 reauthorization legislation, would protect the WIC Program from paying excess money for WIC foods. Making the inflation adjustment consistent for all CMP levels would benefit WIC Program administration by making the CMP maximum amounts uniform for all violations.

Costs

Although this final rule has been designated as significant, the costs associated with implementing the changes are not expected to significantly add to current program costs.

Little time will be needed to issue a notice of violation to a vendor, which presumably will entail a standardized format with space for the vendor's name and address and for listing the violation. Likewise, little time will be needed to document in the vendor file the reason(s) such notice would compromise an investigation and thus would not be sent.

The State agency is required to provide the list of registered or licensed infant formula suppliers to vendors on an annual basis, which a State agency could satisfy by linking its Web site to the list of licensed suppliers on the Web site of the State's licensing agency, or by providing vendors with a telephone number or e-mail address to inquire about the license status of a supplier.

Based on Fiscal Year 2006 data, FNS currently estimates that only about 1,700 of the approximately 47,000 authorized retail vendors would potentially be subject to incentive items restrictions. Little time will be needed by the State agency to approve/disapprove incentive items, since this process only involves comparison of the vendor's price documentation with the less-than-$2 nominal value limit. Indeed, the State agency may provide above-50-percent vendors with a list of allowable incentive items, and the vendor would indicate on the list which of these incentive items it wishes to use and return the list to the State agency.

The final rule's process for the periodic adjustment of WIC vendor CMP amounts to reflect inflation would not increase administrative costs because the CMP calculation process would be the same for all vendor violations. Under the current regulations, the CMP levels for some but not all vendor violations have previously been adjusted for inflation. Under the final rule's process, all vendor CMP levels would be periodically adjusted for inflation. Initially, this would have the effect of raising the maximum CMP level from $10,000 to $11,000 per violation, and raising the CMP level from $40,000 to $44,000 as the maximum amount for all violations occurring during a single investigation, for those WIC CMP levels which have not previously been adjusted for inflation.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, Nancy Montanez Johner, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule would not have a significant impact on a substantial number of small entities. Although not required by the RFA, FNS has prepared this Regulatory Flexibility Analysis describing the impact of the rule on small entities and State agencies.

In accordance with the CNA, as amended, the final rule would require that State agencies implement restrictions on the incentive items provided at no cost to program participants by above-50-percent vendors in order to prevent the cost of the incentive items from increasing the food prices charged to the WIC Program by these vendors. The final rule permits certain kinds of incentive items which cost the vendor less than $2, pursuant to USDA's authority in the CNA to establish a nominal monetary amount which would be acceptable for incentive items. FNS estimates that about 1,700 of the approximately 47,000 authorized vendors are above-50-percent vendors, including 1,066 which serve WIC participants exclusively, and an additional 634 which derive more revenue from WIC sales than from non-WIC sales but also have a substantial non-WIC customer base.

The annual receipts of 25 percent of all WIC-authorized vendors (11,600) surpass the maximum level of annual receipts used by the Small Business Administration (SBA) to define a ''small business concern'' in 13 CFR 121.201 ($25 million for grocery stores and $6.5 million for pharmacies), including 69 of the above-50-percent vendors. Also, the 634 above-50-percent vendors with a substantial non-WIC customer base have not been known to use the sort of incentive items which are prohibited by this rule. Thus the rule's incentive item restrictions mainly impact 997 of the 35,400 vendors which are small businesses according to SBA's regulations, 2.8 percent of the total (1,700 above-50-percent vendors − 69 large business = 1,631; 1,631 − 634 above-50-percent vendors with a substantial non-WIC customer base = 997).

It is unlikely that the incentive item restrictions of this final rule will have a significant impact on these 997 vendors which exclusively serve WIC participants. In 2005, the Food and Nutrition Service (FNS) published a regulation aimed at controlling the costs of higher-priced vendors (see, WIC Vendor Cost Containment Interim Rule, 70 FR 71708, November 29, 2005). The Vendor Cost Containment regulation requires that the average WIC redemptions per food instrument type for above-50-percent vendors (which includes those vendors that exclusively serve WIC participants) not exceed the regular vendor average WIC redemptions per food instrument type in each State. The requirements of the Vendor Cost Containment regulation have made it increasingly difficult to incorporate the cost of incentive items into the cost of supplemental foods. Thus, it is likely that the number of vendors providing incentive items has decreased significantly since the effective date of the Vendor Cost Containment regulation.

The Department considered nominal amounts slightly higher than $2. However, to avoid the possibility of the value of incentive items being incorporated into the costs of supplemental foods, the Department chose the $2 limit instead of higher amounts in order to preserve WIC funds for service to participants.

FNS also does not expect the other three provisions of the final rule to have a significant economic impact on small entities. One of these provisions requires State agencies to provide WIC retail vendors with a list of State-licensed infant formula wholesalers, distributors, retailers, and FDA-registered manufacturers; vendors may obtain infant formula for sale to WIC participants only from the suppliers on the list. These authorized sources of infant formula include thousands of wholesalers, distributors, and retailers nationwide, as well as six manufacturers. Thus it is exceedingly doubtful that this requirement will harm or inconvenience any vendors.

Also, State agencies are not included under the definition of ''small governmental jurisdictions'' in section 601(5) of the RFA, which only includes local governmental organizations. Thus the impacts of regulations on WIC State agencies, including the requirement for this list of infant formula sources, are not subject to RFA requirements. Even so, this final rule is sensitive to the administrative burden of State agencies, permitting State agencies to provide their lists of infant formula sources to vendors on web sites, to obtain the lists from other State agencies, and to limit the kinds of sources which will be included so that the lists would not be too large.

One of the other provisions requires the State agency to notify a vendor of a violation in writing before documenting a subsequent violation which could result in sanctions based on a pattern of violations, unless such notification would compromise an investigation. This provision will help vendors to comply with their responsibilities and thus prevent sanctions. FNS estimates that only 5 percent of WIC-authorized vendors would be impacted by this provision. Moreover, this impact would be economically beneficial for these vendors since such notification would help them to prevent the loss of business resulting from disqualification, or CMP payments imposed in lieu of disqualification, and related legal costs.

The remaining provision would periodically increase the CMP amounts to reflect inflation for those CMPs which had not previously been adjusted for inflation. FNS estimates that only 3 percent of WIC-authorized vendors would be impacted by this provision. Moreover, this provision would only increase maximum CMP amounts on a periodic basis to reflect inflation; the underlying formula for calculating CMP amounts, based on a percentage of a vendor's average redemptions and the number of violations as set forth in § 246.12(l)(1)(x), would not be altered by this provision.

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, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (All references to regulatory sections in this preamble are references to Title 7 of the CFR unless otherwise indicated.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact

of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials

Prior to drafting this final rule, FNS received input from State agencies regarding issues and concerns with implementation of the three legislative provisions contained in this rulemaking. FNS regional offices have formal and informal discussions with WIC State agency officials on an ongoing basis regarding program and policy issues. In December 2004 and April 2005, FNS issued policy guidance to WIC State agencies on the implementation of the legislative requirements addressed in this final rule. In response, FNS received a number of questions which resulted in informal discussions with State agency officials and other stakeholders on program implementation. Much of the discussion in the preamble of this rule reflects the substance of those consultations.

Nature of Concerns and the Need To Issue This Rule

State agencies are primarily concerned with the potential administrative burdens involved with implementing the new legislative requirements in this final rule.

Extent to Which Those Concerns Have Been Met

FNS has considered the impact of this final rule on WIC State and local agencies. Through the rulemaking process, FNS has attempted to balance the need for State agencies to meet the new requirements against the administrative challenges that State agencies are likely to encounter in meeting them. These challenges include the commitment of adequate resources to compile the list of acceptable entities from which infant formula must be purchased; determine when notification of violations would compromise an investigation; and, develop and enforce the incentive items provisions.

The final rule allows State agencies discretion to determine if providing notification of violations to vendors before documenting additional violations would compromise the investigation.

In addition, under the final rule, State agencies could use their Web sites as the primary means for providing their vendors with lists of infant formula manufacturers registered with the FDA and infant formula wholesalers, distributors, and retailers licensed under State law. Indeed, under the term ''other effective means,'' the final rule permits State agencies to provide vendors with a telephone number or e-mail address to inquire about the license status of a supplier, instead of providing vendors with a list. FNS will also provide the State agencies with the FDA list of manufacturers, and State licensing and tax authorities could provide the WIC State agencies with lists or Web site links on the other suppliers. Further, State legislation or rulemaking could be used to limit the kind of suppliers to be included on the lists provided to the vendors.

The final rule allows State agencies the discretion to determine what, if any, incentive items may be provided by above-50-percent vendors to participants. If a State agency decides not to permit such promotions at all, then there would be no administrative burden to the State agency to approve such items to ensure compliance with the statutory requirement.

Finally, State agencies would need to amend their schedules of sanctions to reflect the inflation adjustments for CMP levels in this final rule and to notify their vendors of this change. FNS does not expect this to involve a significant expenditure of resources.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of this rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted. This rule concerns WIC vendors. In the WIC Program, the administrative procedures which must be exhausted by WIC vendors are as follows. First, State agency hearing procedures pursuant to § 246.18(a)(1) must be exhausted for vendors concerning denial of authorization, termination of agreement, disqualification, civil money penalty or fine, or the State agency's determination of peer group or above-50-percent status. Second, the State agency process for providing the vendor an opportunity to justify or correct the food instrument pursuant to § 246.12(k)(3) must be exhausted for vendors concerning delaying payment for a food instrument or a claim. Third, administrative appeal to the extent required by § 3016.36 must be exhausted for vendors concerning procurement decisions of State agencies.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to soften the effect on any of the protected classes regarding those provisions of the rule concerning notice of violations and restrictions on incentive items. However, the rule explicitly forbids discrimination against a protected class recognized by the WIC Program (race, color, national origin, age, sex, or disability) regarding the inclusion of businesses on the list which State agencies must provide to vendors of infant formula manufacturers registered with the FDA, and State-licensed infant formula wholesalers, distributors, or retailers. All data available to FNS indicate that protected classes have the same opportunity to participate in the WIC Program as non-protected classes. FNS specifically prohibits the State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, age, sex, or disability in accordance with § 246.8. Where State agencies have options and they choose to implement a certain provision, they must implement it in such a way that it complies with the § 246.8.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This final rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection under OMB#0584–0043 to OMB. This information collection contains changes in the burden based on comments on the proposed rule Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, 71 FR 43371, August 1, 2006 (proposed rule),

and information not available when the proposed rule was published.

As previously noted, October 1, 2004 was the effective date of Public Law 108–265. Thus in December 2004 and April 2005, FNS issued policy and guidance to WIC State agencies on implementation of its three requirements noted above. As a result, the comments on the information collection burden reflect actual experience. The following discussion describes the information collection burden of the proposed rule and responds to the comments received on the information collection burden:

1. Reporting

Section 246.4(a)(14)(iii)

Section 246.4(a)(14)(iii), as proposed, would require WIC State agencies to set forth policies and procedures in their WIC State Plans for notifying a retail vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be imposed in order to impose a sanction, unless the State agency determines that the notice would compromise an investigation. Section 246.4(a)(14)(iii), as proposed, would also require WIC State agencies to set forth policies and procedures in their WIC State Plans for the approval of incentive items which above-50-percent vendors may provide to participants. FNS estimated that § 246.4(a)(14)(iii) would require one burden hour per State agency per year, resulting in 90 total annual burden hours. There were no comments on the information collection burden of this provision. Accordingly, 90 total annual burden hours is adopted for this provision.

Section 246.4(a)(14)(xvii)

Section 246.4(a)(14)(xvii), as proposed, would require WIC State agencies to set forth policies and procedures in their WIC State Plans for annually compiling and distributing to authorized WIC retail vendors a list of infant formula wholesalers, distributors, and retailers licensed under State law, and infant formula manufacturers registered with the Food and Drug Administration (FDA). FNS estimated that this would require one burden hour per State agency per year, resulting in 90 total annual burden hours. There were no comments on the information collection burden of this provision. Accordingly, 90 total annual burden hours is adopted for this provision.

Section 246.12(h)(8)

Section 246.12(h)(8), as proposed, would require WIC State agencies to establish a process for approval or disapproval of requests from above-50-percent vendors for permission to provide incentive items to WIC participants or other customers. The proposed rule did not include any burden hours for vendors for this provision. However, given the analysis of the recordkeeping information burden for State agencies regarding this provision, a reporting information burden for vendors also needs to be recognized. Both are discussed below regarding § 246.12(h)(8).

2. Recordkeeping

Section 246.12(g)(11)

Section 246.12(g)(10) of the proposed rule (which is designated as § 246.12(g)(11) in this final rule due to publication of an intervening rule) would require WIC State agencies to provide to authorized WIC retail vendors a list, on an annual basis, of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with FDA that provide infant formula. FNS has provided the State agencies with the list of the infant formula manufacturers registered with FDA. A State agency would contact the licensing agency in its State to obtain a list of the other suppliers. A State agency could satisfy this requirement by linking its Web site to the list of licensed suppliers on the web site of the State's licensing agency. FNS estimated that this would require one burden hour per State agency per year, resulting in 90 total annual burden hours.

Two WIC State agencies commented on the information collection burden concerning this requirement. One State agency commenter estimated that 500 hours would be required annually to maintain the list. Another State agency commenter estimated that 120 hours had been required for initial compilation and ongoing maintenance of the list. The experiences and views of these two State agencies may not be representative of the other State agencies. However, to ensure that the estimate provided to OMB for this final rule takes into account the varied experiences of all State agencies, the estimated burden hours per response for the list requirement has been increased from 1 hour to 50 hours for State agencies. Accordingly, the total annual burden hours for the list requirement has been increased from 90 to 4,500 (90 State agencies × 50 burden hours = 4,500 total annual burden hours).

FNS did not estimate any burden hours for vendors regarding this requirement. However, one commenter stated that this requirement would impose an undue burden on vendors because most vendors deal with dozens if not hundreds of suppliers of products within their stores, including numerous jobbers, sub-jobbers, and other sales persons; it would be impossible, this commenter stated, for the vendor to verify the validity of each source of every purchase or to contact the State agency to ascertain the status of the supplier.

The commenter's concerns are unjustified. The source which must be identified is only the source from whom the vendor purchased the infant formula, not the manufacturer or supplier from whom the vendor's source purchased the infant formula. Also, the infant formula list requirement only pertains to ''infant formula'' as defined in the WIC regulations, which does not include ''exempt infant formula'' (formulas requiring a medical prescription), ''WIC-eligible medical foods,'' or any other kind of food.

Further, as recognized by § 246.12(h)(3)(xv), vendors are already required to maintain inventory records used for Federal tax reporting purposes, which would include invoices for infant formula, and to make such records available to the State agency upon request. Thus the infant formula list requirement does not impose any new reporting or recordkeeping burden on vendors. Moreover, attaching a copy of an invoice to a vendor application form, or providing a copy to the State agency at some other time, would involve a negligible amount of time.

Section 246.12(h)(8)

Section 246.12(h)(8), as proposed, would require WIC State agencies to establish a process for approval or disapproval of requests from above-50-percent vendors for permission to provide incentive items to WIC participants or other customers. As previously mentioned, FNS currently estimates that about 1,700 of the approximately 47,000 authorized vendors would potentially be subject to incentive items restrictions. However, when the proposed rule was issued, FNS estimated that about 2,000 of approximately 50,000 authorized vendors would be subject to incentive items restrictions. A State agency could decide not to allow any incentive items at all, in which case an approval process would not be necessary. FNS had received inquiries from several WIC State agencies indicating an interest in not allowing such incentive items at all.

As a result, the estimate set forth in the preamble of the proposed rule assumed that half of the WIC State agencies would not allow any incentive items at all, and that half of the approximately 2,000 above-50-percent vendors nationwide reside in those States. The estimate also assumed that little time would be needed to approve/disapprove a request and record it, since this process only involves comparison of the vendor's price documentation with the less-than-$2 limit established for such items in the rule. Indeed, the State agency could have provided above-50-percent vendors with a list of allowable incentive items, valued below the less-than-$2 nominal value limit per item; the vendor would indicate on the list which of these incentive items it wishes to use and return the list to the State agency. Thus FNS estimated that State agencies would approve/disapprove incentive items for 1,000 above-50-percent vendors, and that each approval/disapproval would require 0.25 burden hours, resulting in 250 total annual burden hours.

One commenter addressed the burden of the incentive items restrictions. This commenter stated that the incentive items restrictions were burdensome, requiring complex internal policies and regulations, and resulting in additional monitoring and enforcement, as well as more training for vendors. The commenter did not address the number of burden hours.

Another commenter stated that it would be burdensome for State agencies to maintain invoices or similar documentation of the vendor's approved incentive items, showing that the cost of each item is either less than the $2 nominal value limit or obtained at no cost, as would be required by § 246.12(h)(8)(ii). As indicated in the proposed rule at 71 FR 43381, this documentation could include a list of items and the related invoices, submitted by the vendor to the State agency for approval, or this documentation could include a list of pre-approved items submitted by the State agency to the vendor for the vendor to return to the State agency indicating which of the pre-approved incentive items have been chosen by the vendor; this latter approach is acceptable as intended by the regulatory language that refers to ''similar documents.'' Thus, the State agency is required to maintain copies of invoices only if the State agency permits vendors to request approval for incentive items not included on a list of acceptable incentive items provided by the State agency.

The Department does not view the pre-approved list as involving an appreciable information collection burden. If the pre-approved list is returned by the vendor at the same time the vendor returns the signed vendor agreement during the authorization process, the proposed requirement of § 246.12(h)(8)(ii) amounts to little more than maintaining the copy of the vendor agreement signed by the vendor, which the State agency is already required to do. However, some State agencies may not use this approach, preferring instead that vendors request approval for incentive items outside of the vendor agreement process.

This commenter also did not state the number of burden hours needed to comply with this requirement. However, to ensure that the estimate provided to OMB for this final rule takes into account the concerns of these two commenters, the estimated burden hours per response for § 246.12(h)(8) has been increased from 0.25 hours to 1 hour per response for State agencies which require approval for incentive items outside of the vendor agreement process.

As pointed out in the section of this preamble concerning the RFA, it is likely that the number of vendors providing incentive items has decreased significantly since the effective date of the Vendor Cost Containment regulation. It is also likely that a significant portion of the above-50-percent vendors reside in States where either incentive items are not allowed, or, if incentive items are allowed, the agreement process is used. Based on data not available when the proposed rule was published, FNS now knows that 32 State agencies authorized above-50-percent vendors during Fiscal Year 2006. Thus FNS estimates that half of the approximately 1,700 above-50-percent vendors (850) would have an appreciable reporting information collection burden due to the restrictions on incentive items. Accordingly, the estimate has been revised to 850 total annual burden hours for the incentive items restrictions in this final rule (850 above-50-percent vendors ÷ 16 State agencies = 53.125 above-50-percent vendors per State agency; $16 \times 53.125 \times 1$ hour per response = 850 total annual burden hours).

Section 246.12(l)(3)

Section 246.12(l)(3) of the proposed rule would require the State agency to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction before another such violation is documented, unless the State agency determines, in its discretion on a case-by-case basis, that notifying the vendor would compromise an investigation. Prior to imposing a sanction for a pattern of violations, the State agency would either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such notice would compromise an investigation. Approximately 2,300 vendors investigated annually commit violations involving a pattern.

For the proposed rule, FNS assumed that little time would be needed to issue the notice, which presumably would entail a standardized format with space for the vendor's name and address and for listing the violations. FNS also assumed that little time would be needed to document in the vendor file the reason(s) such notice would compromise an investigation and thus would not be sent. Thus FNS estimated that State agencies would either issue such notices or make such entries in vendor files 2,300 times, and that issuing each notice or making such entries would require 15 minutes each, resulting in 575 total annual burden hours ($2{,}300 \div 90 = 25.55$; $25.55 \times 90 \times 0.25 = 575$).

There were three comments on the information collection burden of this provision. Two of these comments stated that the provision was inconsistent with the goal of paperwork reduction, but did not take issue with the number of burden hours estimated in the preamble of the proposed rule. The other commenter, a State agency, stated that it had used approximately 9,180 hours reviewing additional compliance buys and generating notice letters as a result of the notice requirement.

As previously noted, approximately 2,300 vendors investigated annually by all WIC State agencies are found to be committing types of violations subject to sanctions only if the investigation shows that a pattern of such violations had occurred. Thus, applying the commenter's estimate of 9,180 hours for one State agency to the 2,300 vendors for all State agencies, 4 hours would be required to either issue the notification of violation to the vendor or note in the vendor's file the reason(s) for not issuing the notification. Since a single State agency conducts far fewer than 2,300 such investigations annually, the number of hours needed for a single State agency to issue the notification or document the reason(s) for not doing so would be significantly greater than 4 hours based on the commenter's estimate of 9,180 hours.

However, the commenter's estimate indicates that the estimated burden hours in the preamble of the proposed rule may have been too low. Accordingly, the information collection burden submitted to OMB for this activity has been increased from 0.25 hours per response to 1 hour per response, for an annual total for all 90 State agencies of 2,350 burden hours (2,300 ÷ 90 = 25.55; 25.55 × 90 × 1 burden hour = 2,300 burden hours).

Adjustments Unrelated to the Final Rule

Adjustments have been made to the existing burden hours for the entire OMB# 0584–0043 information collection burden to reflect the adding of a new respondent category for applicants for program benefits, and for vendors concerning collections which existed prior to the final rule. For applicants for program benefits, 292,983 burden hours have been added, to take into account the information provided by these applicants during the certification process.

For vendors, 23,500 burden hours have been added to take into account the information provided by vendors during the vendor application and agreement processes. Further, there are now 47,000 vendors, an increase over the previous 45,000 recognized in the approved information burden, which impacts the burden hour calculations for the application and agreement processes as well as the collection of vendor shelf prices and food sales data. However, the number of vendors actually required to provide food sales data annually has been reduced from the previous number of 45,000 to 5,640 because FNS matching of WIC vendor redemptions with redemptions for the same vendors in the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, has made it unnecessary to collect shelf price data from 88 percent of the vendors (12 percent of 47,000 vendors is 5,640).

Also, numerous categories of State agency information burdens were previously based on 89 State agencies. Since the previous approval of the OMB #0584–0043 collection burden, an additional State agency has been added, so that now there are a total of 90 State agencies. All of the aforementioned adjustments together account for 391,981 hours.

The following chart shows the estimated annual information burden for the final rule. Five of the six burden categories noted in the chart pertain to State agencies; the one which pertains to vendors is so noted. Decimals are not included in the figures.

ESTIMATED ANNUAL INFORMATION COLLECTION BURDEN OMB #0584–0043

Section of regulations	Annual number of respondents	Annual frequency	Average burden hours per response	Annual burden hours
Reporting Burden				
§246.4(a)(14)(iii)	90	1	1.0	90
§246.4(a)(14)(xvii)	90	1	1.0	90
§246.12(h)(8)vendors	850	1	1.0	850
Total Reporting Burden in the Final Rule	180	2		1,030
Recordkeeping Burden				
§246.12(g)(11)	90	1	50	4,500
§246.12(h)(8)	16	53	1.0	850
§246.12(l)(3)	90	26	1.0	2,300
Total Recordkeeping Burden in the Final Rule.	196	80		7,650
Total Reporting and Recordkeeping Burden in the Final Rule.	376	82		8,680
Total Program Changes Burden Hours for the Final Rule.				8,680
Total Adjustments Burden Hours (including other sections of the regulations).				391,981
Total Program Changes and Adjustments Burden Hours.				400,661
Total Current WIC Reporting and Recordkeeping Burden Approved by OMB for Information Collection #0584–0043.	15,595,000 (over-count)			3,050,545
Grand Total WIC Reporting and Recordkeeping Burden.	1,990,457 (as adjusted)			3,451,206

E-Government Act Compliance

FNS 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.

II. Background

The proposed rule entitled Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, was published on August 1, 2006, at 71 FR 43371 (proposed rule). FNS received 17 letters or electronic mail messages commenting on the proposed rule, including 10 from WIC State agencies; 2 from WIC-authorized vendors; 2 from vendor advocacy organizations; 1 from a WIC local agency association; 1 from a social service advocacy organization; and 1 from a company which provides consulting services to government agencies.

As previously noted, this final rule amends the WIC Program regulations by adding three requirements mandated by the amended CNA concerning retail vendors authorized by WIC State agencies to provide supplemental food to WIC participants in exchange for WIC food instruments. This rulemaking reflects the statutory requirement that WIC State agencies notify WIC-authorized vendors of an initial violation in writing for violations requiring a pattern of violative incidences in order to impose a sanction before documenting a subsequent violation, unless notification would compromise an investigation. In addition, the State agency is required to maintain a list of State-licensed wholesalers, distributors, and retailers, and FDA-registered manufacturers, and WIC-authorized vendors are required to purchase infant formula only from sources on the list. Further, State agencies are prohibited from authorizing or making payments to WIC-authorized vendors that derive more than 50 percent of their annual food sales revenue from WIC food instruments (''above-50-percent vendors'') and which provide incentive items or other free merchandise, except food or merchandise of nominal value, to program participants or other customers unless the vendor provides the State agency with proof that the vendor obtained the incentive items or merchandise at no cost.

October 1, 2004 was the effective date of Public Law 108–265 for all of these requirements. In December 2004 and April 2005, FNS issued policy and guidance to WIC State agencies on implementation of these requirements. This final rule reflects the policy and guidance provided to State agencies.

Additionally, this final rule adds a process for periodically adjusting the WIC vendor CMP levels for inflation in a manner that is consistent for all WIC violations.

The Department's responses to the comments are set forth below, except for the comments on the administrative burden of the proposed provisions. The Department's response to the comments on the administrative burden of the proposed rule are set forth above in the sections of this preamble entitled ''Federalism Summary Impact Statement'' and ''Paperwork Reduction Act.''

1. Notice of Violation (§§ 246.4(a)(14)(iii), 246.12(h)(3)(xviii), 246.12(l)(3), and 246.18(a)(1)(iii)(F))

Section 203(c)(5) of Public Law 108–265 amended Section 17(f) of the CNA by adding a new paragraph (26) to require the State agency to notify the vendor in writing of the initial violation, for violations requiring a pattern of occurrences in order to impose a sanction, prior to documenting another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

This requirement was effective for violations committed under investigations beginning on or after October 1, 2004, even though the current § 246.12(l)(3) provides that the State agency is not required to warn a vendor that violations had been detected before imposing a sanction. In December 2004, State agencies were advised that their vendor agreements and sanction schedules must be reviewed and amended as appropriate to reflect this new requirement.

Nine comments addressed the notification provisions of the proposed rule. One commenter stated unconditional support for the notification provisions. Five commenters stated conditional support for the proposed provision. Three commenters stated their opposition to the proposed provision.

The Extent of the State Agency's Discretion (§ 246.12(l)(3))

One commenter objected to the provision for State agency discretion in the determination on whether to provide notification in § 246.12(l)(3) of the proposed rule. The commenter also objected to the statement at 71 FR 43377 of the proposed rule that a State agency could decide not to use notification on the basis of the severity of the initial violation, the compliance history of the vendor, and whether the vendor has been determined to be high risk. The commenter viewed these examples as well beyond the scope of the statute.

According to the commenter, the State agency must provide the notification unless there is a substantial basis to believe that fraud is occurring and such fraud is actively under investigation. Further, this commenter stated that the State agency must determine that the notice would compromise an investigation, not ''may'' or ''might'' do so, in order to decide that notification should not be provided. The commenter also stated that the State agency should be required to make an affirmative determination that notification would compromise an ongoing investigation and document the results of the determination before conducting a subsequent inspection. However, another commenter stated that the State agency should be permitted to determine that the notice ''could,'' ''probably,'' or would ''likely'' compromise an investigation, not ''would'' compromise an investigation, which is definite and difficult to know. Another commenter stated that, in most instances, vendors are unaware of violations because it is not possible to monitor all of the WIC food instruments accepted by store staff, although notification would not be appropriate when the State agency has sound reason to believe that the vendor owner or manager is involved in fraud against WIC.

The Department continues to believe, as stated at 71 FR 43377 of the proposed rule, that the statute provides the State agency with the discretion to determine whether notifying the vendor will compromise an investigation and to use its judgment to determine whether a notice should be sent to the vendor. Accordingly, the provision for State agency discretion in § 246.12(l)(3) of the proposed rule remains in the final rule. Also, the Department disagrees with the commenter's objections to the examples of factors cited at 71 FR 43377 which the State agency has the discretion to consider in making its determination.

One of the commenters also interpreted a statement at 71 FR 43377 of the proposed rule to mean that a State agency could decide not to provide the notification on the basis that an investigation is covert. The commenter stated that this would be contrary to the intention of the legislative provision since the need for notification pertained only to covert investigations; this provision would be rendered meaningless if a State agency could decide not to provide notification on the basis that an investigation is covert. The commenter also pointed out that this would be inconsistent with the provision in the proposed rule which would require a case-by-case determination by the State agency on whether to provide notification to the vendor. The Department agrees with the commenter. The statement in the preamble of the proposed rule was only intended to point out that the notification requirement pertains only to covert investigations since notification would reveal the existence of an investigation which had been previously unknown to the vendor. Thus § 246.12(l)(3) of the final rule, unchanged from the proposed rule, does not permit the State agency to exclude an investigation from the notification requirement on the sole basis that the investigation is covert.

This commenter further stated that the preamble of the proposed rule at 71 FR 43377 should not have stated that a State agency could decide not to provide notification on the basis that an

investigation was being conducted on the same vendor by another agency, since the coincidental investigation by another agency does not necessarily have any bearing on the status of the vendor's compliance with WIC Program requirements. The Department does not agree with this comment. The statutory provision states that the State agency shall notify the vendor unless the State agency determines that notifying the vendor would compromise an investigation, not its investigation. Thus an investigation being conducted by another agency, such as FNS or the USDA Office of Inspector General, is relevant to the State agency's determination on whether to provide notification. Accordingly, unchanged from the proposed rule, § 246.12(l)(3) of the final rule refers to an investigation, not its investigation.

This commenter also requested clarification regarding a statement at 71 FR 43377 that notification would not be needed after a violation occurred in a compliance buy visit subsequent to a notification based on a different type of violation which had occurred during a previous visit. The commenter believes that this may mean that the State agency may consider the risk of compromising investigations with notification to increase if a violation is observed in subsequent visits.

Such subsequent violations would need to be violations of a different type than the previous violation because a second or subsequent notification is not required for a violation of the same type for which notification has already been provided. Also, the fact that notification was provided regarding a previous violation does not mean that the State agency must provide notification for all subsequent violations of different types. Thus § 246.12(l)(3) of the final rule, unchanged from the proposed rule, allows the State agency to determine that notification concerning subsequent violations would compromise an investigation even though this determination was not made regarding the previous violation, due to facts or circumstances not known or not considered at the time of the previous violation.

Two commenters stated that State agencies should not be required to determine whether to provide notification on a case-by-case basis, as would be required by § 246.12(l)(3) of the proposed rule, but instead should be permitted to make categorical determinations based on the nature and seriousness of the violations. These commenters stated that serious violations such as overcharging are not inadvertent and thus should be subject to categorical exclusions from the notice requirement as determined by the State agency. One of these commenters also pointed out that the proposed rule categorically excludes violations based on WIC redemptions exceeding inventory and violations resulting in sanctions based on single violations such as trafficking, implying that other categories could also be excluded.

The Department does not agree. Serious violations may be fraudulent, but sometimes are not; overcharging cannot be categorically assumed to be fraudulent. Sometimes, overcharging might be inadvertent. Thus one compliance buy showing overcharging could not, by that fact alone, be sufficient for determining that notification would compromise an investigation. However, the severity of that violative incidence might be sufficient, if, for example, the overcharge was considerably higher than the monetary threshold established by the State agency as the basis for establishing that overcharging had occurred. The proposed rule would have excluded violations established by a single incidence because the statutory provision requires notification following the initial incidence of a violation which is established by a pattern of violative incidences; trafficking (§ 246.12(l)(1)(ii)(A)), illegal sales (§ 246.12(l)(1)(ii)(B)), and exchange of alcohol or tobacco for food instruments (§ 246.12(l)(1)(iii)(A)) are violations established by one violative incidence. Also, the proposed rule would have excluded violations based on WIC redemptions exceeding inventory (§ 246.12(l)(1)(iii)(B)) since this violation is detected in a single inventory audit instead of a pattern of violative incidences, so that there is no initial incidence. Accordingly, § 246.12(l)(3) of this final rule requires the State agency to determine whether to provide notification of violations to vendors on a case-by-case basis, as in the proposed rule.

Finally, one commenter stated that the notification requirement would allow a dishonest vendor to commit a violation without consequence and continue to do so for an extended period. The Department does not agree. A State agency may initiate a claim pursuant to § 246.12(k) regarding the food instruments containing the violative incidences even though the number of violative incidences (i.e., the pattern) needed to impose a sanction has not been established. Moreover, claims may be initiated before or after the investigation is completed; § 246.12(k)(4) states that the State agency must deny payment or initiate claims collection action within 90 days of either the date of detection of the vendor violation or the completion of the review or investigation giving rise to the claim, whichever is later.

Compliance Investigation Consisting of One Violative Incidence (§ 246.12(l)(2)(i) and (l)(3)(v))

One commenter stated that the vendor would be defenseless if the State agency defines one compliance buy as an investigation, since the vendor owner or manager would only learn about an employee's error when the State agency imposes a sanction on the vendor; the rule should require that, upon the initial discovery of any violation, the vendor must be notified, and this initial discovery must not constitute an investigation.

One violative incidence would constitute a complete investigation under the current regulations for only the most serious types of vendor violations subject to mandatory sanctions. As set forth in § 246.12(l)(1)(ii) and (l)(1)(iii), one violative incidence of trafficking (buying or selling WIC food instruments for cash) or illegal sales (selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food instruments) must result in a six-year disqualification, and one violative incidence of the sale of alcoholic beverages or tobacco products in exchange for WIC food instruments must result in a three-year disqualification.

A pattern of violative incidences must be established in order to impose any of the other mandatory vendor sanctions. This pertains to four violations subject to mandatory three-year disqualifications, including overcharging; receiving, transacting, or redeeming food instruments outside of authorized channels; charging for supplemental food not received by the participant; and providing credit or non-food items (other than alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances) in exchange for WIC food instruments. A pattern of violative incidences must also be established in order to impose a mandatory one-year disqualification based on providing unauthorized food items, including for supplemental foods provided in excess of those listed on the food instrument.

By contrast, the current § 246.12(l)(2)(i) does not require that a pattern of violative incidences must be established in order for a State agency to impose sanctions based on violations which are not subject to mandatory

sanctions, referred to as ''State agency vendor sanctions.'' The State agency has the discretion to define such violations and the resulting sanctions, including the number of violative incidents required. However, the resulting disqualifications may not exceed one year because the violations addressed by State agency vendor sanctions are less serious than those addressed by mandatory sanctions.

Thus a State agency vendor sanction may be based on only one instance of a violation even though the more serious mandatory sanctions require a pattern of violative incidences; only the most serious mandatory sanctions are imposed based on one violative incidence.

As such, the proposed notification requirement would not apply to mandatory or State agency vendor sanctions based on one incidence of a violation; for those sanctions, one compliance buy would constitute a complete investigation. As a result, a vendor may receive notification and an opportunity to correct more serious violations that require a pattern of violative incidences, but no such opportunity for less serious violations subject to State agency vendor sanctions.

We believe that this result is inconsistent. Thus the Department has concluded that the State agency discretion under the current regulations to require only one violative incidence in order to impose State agency vendor sanctions is incompatible with the new notification requirement.

Accordingly, § 246.12(l)(2)(i) is revised in this final rule to state that a State agency vendor sanction must be based on a pattern of violative incidences. Also, the final rule includes a conforming change by adding § 246.12(l)(3)(v) to state that a single violative incidence visit may only be used to establish a violation for trafficking, illegal sales, and exchange of alcohol or tobacco for WIC food instruments.

Administrative Review (§ 246.18(a)(1)(iii)(F))

One commenter stated that the State agency's determination against providing notification should be subject to administrative review so that the vendor could present evidence illustrating that a State agency's determination to withhold notification was based on factors that a reasonable person could not believe justified the withholding of notification. Another commenter stated that the State agency's determination should be subject to review because the circumstances under which a State agency may avail itself of an exception to the notification requirement are narrowly drawn by the statute.

The Department does not agree. As stated at 71 FR 43382 of the proposed rule, administrative review of the absence of such notification would be inconsistent with the discretion provided to the State agency by the statute. Further, the information used by the State agency to make its determination may not be appropriate for public disclosure, such as the high-risk determination process, knowledge of an investigation conducted by another agency, and evidence obtained from a confidential source. Accordingly, § 246.18(a)(1)(iii)(F) of the proposed rule remains unchanged in the final rule.

2. List of Infant Formula Manufacturers, Wholesalers, Distributors, and Retailers (§§ 246.4(a)(14)(xvii), 246.12(g)(3)(i), 246.12(g)(11), 246.12(h)(3)(ii), 246.12(i)(2), and 246.18(a)(1)(iii)(D))

Section 203(e)(8) of Public Law 108–265 amends Section 17(h)(8)(A) of the CNA by requiring that each State agency maintain a list of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with FDA that provide infant formula. This statute requires authorized vendors to only purchase infant formula from sources on the above-described list. In December 2004, State agencies were notified of the requirement and when to amend their State Plans, vendor agreements, vendor manuals, and vendor training plans and materials as appropriate to reflect this new requirement.

This provision is intended to prevent stolen infant formula from being purchased with WIC food instruments. Such formula may constitute a health hazard for a variety of reasons, including direct tampering with formula before it is sold to unsuspecting retailers, falsification of labeling to change expiration dates, counterfeiting, or improper storage.

The Department proposed to add a new § 246.12(g)(10) which would require the State agency to provide the above-noted list of infant formula sources to the vendors on at least an annual basis, and that list must include the addresses as well as the names of the businesses; this is intended to make it easier for vendors to locate a nearby business and also to avoid inadvertently contacting an unlicensed business with a similar name. In addition, in § 246.12(g)(10)(i), the Department proposed to require a State agency to notify vendors that they must purchase infant formula only from the sources set forth on the State agency's list, although the State agency may, at its option, permit vendors to obtain infant formula from sources on another State agency's list. (Section 246.12(g)(10) of the proposed rule has become § 246.12(g)(11) in the final rule.) Further, §§ 246.4(a)(14)(xvii) and 246.12(g)(3)(i) proposed to require the State agency to adopt a new vendor selection criterion requiring vendors to obtain infant formula from the listed sources as a condition of authorization.

Eleven comments addressed these provisions; two supported the provisions unconditionally, one supported the provisions conditionally, with comments, and eight opposed the provisions.

Several comments questioned the effectiveness of the legislative provision and recommended that this provision be amended. One commenter stated that the proposed rule will not consistently prevent vendors from obtaining formula from unlisted suppliers and thus will not prevent stolen or defective formula from reaching WIC participants. Another commenter stated that the purchase of infant formula for sale by retailers is not sufficiently regulated by most States to keep adulterated stolen infant formula off of the shelves of retail stores because State or local business or health licensing in most States does not involve the oversight needed to ensure that retail stores only obtain infant formula from legitimate sources. This commenter recommended that the legislative provision be amended to prohibit vendors from obtaining infant formula from retailers, or give the State agency the discretion to exclude retailers. As an alternative to the list requirement, two commenters recommended that State agencies be required to routinely verify that their vendors have purchased infant formula from legitimate sources, such as at authorization or during routine monitoring visits. One commenter stated that the burden should be on the vendor to show that it obtains infant formula from an acceptable source.

These comments recommend revision of the legislative provision and are thus beyond the scope of this rulemaking. However, regarding State discretion on the exclusion of retailers, § 246.12(g)(10)(iii)(A) of the proposed rule would permit the exclusion of a State-licensed entity when specifically required by State law or regulations. State agencies would need to consult with their legal counsel to determine the correct process for implementing any restrictions on its list of infant formula

sources. Section 246.12(g)(10)(iii)(A) of the proposed rule remains unchanged in content, and now appears at § 246.12(g)(11)(iii)(A) of the final rule. Also, in § 246.12(g)(10), the Department proposed to permit the State agency to provide the list to vendors in a hard copy format or by other effective means, e.g., providing vendors with a telephone number, e-mail address, or Web site to inquire about the license status of a source. Under the proposed rule, a method of communicating this information to vendors would be acceptable if it is effective. For example, some vendors may not have access to the Internet and will need a hard copy provided by the State agency, or some other means to determine if a business is licensed. Section 246.12(g)(10)(iii)(A) of the proposed rule remains unchanged in content, and now appears at § 246.12(g)(11)(iii)(A) of the final rule.

Two commenters stated that an annual list would not account for the licensing of entities following issuance of the list. If a vendor wants to obtain infant formula from an entity which is not listed, the vendor can contact the State agency for the most up-to-date information. The Department recommends that State agencies seek input from their vendors on the best method for obtaining the most up-to-date information. A vendor advisory council would be an excellent forum for this discussion. Section 246.12(g)(10) of the proposed rule remains unchanged in content, and now appears at § 246.12(g)(11) of the final rule.

Two comments stated that the list requirement will make it difficult for vendors to obtain infant formula from entities located out-of-state. One of the commenters stated that a standard method for reporting data elements is needed because otherwise a State agency will find it difficult to determine if an out-of-state entity is on another State agency's list, and this commenter also inquired as to whether each State agency would need to obtain the lists of other State agencies. Section 246.12(g)(3)(i) of the proposed rule would provide State agencies with the discretion to permit its vendors to obtain infant formula from out-of-state entities on the lists of other State agencies. Section 246.12(g)(3)(i) of the proposed rule remains unchanged in the final rule. Thus a vendor desiring to obtain infant formula from an out-of-State supplier needs to contact its State agency for further instructions on whether this is permitted, and, if so, the procedure for doing so.

One commenter requested guidance regarding the State agency's responsibilities for ensuring that vendors are only obtaining infant formula from the licensed suppliers on the list, such as collecting supplier data from the vendors. Section 246.12(g)(3)(i) of the proposed rule would not have permitted the State agency to authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from entities included on the State agency's list described in § 246.12(g)(10). As pointed out in the proposed rule at 71 FR 43379, vendors would be required to maintain invoices or receipts showing the source of their infant formula purchases to enable the State agency to monitor vendor compliance. State agencies currently have the authority to require vendors to maintain such documentation under § 246.12(h)(3)(xv).

Further, State agencies also currently have the authority under § 246.12(g)(3) to reassess any authorized vendor at any time during the vendor's agreement period using the vendor selection criteria in effect at the time of the reassessment and must terminate the agreements with those vendors that fail to meet them. Finally, State agencies currently have the discretion under § 246.12(l)(2) to establish sanctions for vendors which have obtained infant formula from unlicensed entities. The State agency may use routine monitoring visits pursuant to § 246.12(j)(2) to review infant formula invoices or other similar documentation for the purpose of determining whether the vendor has continued to obtain infant formula from a licensed entity.

Finally, one commenter stated that § 246.12(h)(3)(ii)(A) in the proposed rule should use the term ''participant'' instead of ''customer.'' The Department agrees. Accordingly, ''participant'' is substituted for ''customer'' in the last sentence of § 246.12(h)(3)(ii)(A) in the final rule.

3. Incentive Items (§§ 246.12(g)(3)(iv), 246.12(h)(8), 246.12(i)(2), 246.12(l)(1)(iv)(B), and 246.18(a)(1)(iii)(E))

Section 203(e)(13) of Public Law 108–265 amends section 17(h)(14) of the CNA by prohibiting a State agency from authorizing or making payments to above-50-percent vendors which provide incentive items or other free merchandise to program participants, with only two exceptions. One exception includes food or merchandise of nominal value as determined by the Secretary; USDA advised State agencies in December 2004 that the nominal value is less than $2. The other exception includes incentive items or other merchandise for which the vendor provides proof to the State agency showing that the vendor had obtained the incentive items or other merchandise at no cost. Above-50-percent vendors are for-profit vendors that derive more than 50 percent of their annual food revenue from the transaction of WIC food instruments or for-profit vendor applicants expected to derive more than 50 percent of annual food revenue from the transaction of WIC food instruments. The above-50-percent vendor category includes vendors which have often been referred to as ''WIC-only stores.'' In December 2004, State agencies were advised to amend their vendor selection criteria and sanction schedules to reflect this new requirement.

The Department proposed to add a new vendor selection criterion to the WIC regulations which would make compliance with the State agency's incentive items policies a condition of vendor authorization for above-50-percent vendors. This proposed provision, § 246.12(g)(3)(iv), also described allowable and prohibited incentive items. Further, the Department proposed to include a requirement for a mandatory sanction for incentive items violations committed by above-50-percent vendors. The proposed rule would also require training for vendors on the policies and procedures concerning incentive items. Finally, the rule proposed to require the State agency to include in its vendor agreement with the above-50-percent vendor, or in another document provided to the above-50-percent vendor and cross-referenced in the vendor agreement, the policies and procedures regarding the provision of incentive items to customers.

Seven comments were submitted on the incentive items provisions of the proposed rule. Two of these comments supported the incentive items provisions unconditionally; three supported the provisions conditionally, requesting revisions; and, two comments opposed the provisions.

Services

Under the proposed rule, services which constitute a conflict of interest, or which have the appearance of such conflict, would be a prohibited incentive item. For example, assistance with applying for WIC benefits would be prohibited because the above-50-percent vendor would benefit financially if the applicant is certified. For-profit services for which the participant pays a fair market value, and which do not present a conflict of interest, would be allowable.

One commenter stated that for-profit services should not be permitted as an

incentive item, as would have been allowed by § 246.12(g)(3)(iv)(A)(*4*) of the proposed rule. This commenter stated that it would require extensive research by the State agency to determine the fair market value of a service; the State agency's determination would be open to interpretation; and, resources would be needed to monitor vendor compliance. The commenter stated that such other services are really other business enterprises, so that WIC requirements for such activity would infringe on property rights. In addition, the commenter stated that this provision implies that transportation service could be an acceptable incentive item, but which should be prohibited for the aforementioned reasons. Similarly, another commenter stated that § 246.12(g)(3)(iv)(B)(*7*) of the proposed rule should not have proposed to prohibit services of greater than nominal value if they are minimal customary courtesies of the retail food trade, are not for-profit, and do not involve an actual or apparent conflict of interest. One other commenter stated that State agencies should not be able to prohibit the minimal customary courtesies of the retail food trade or for-profit services offered at fair market value, as would have been permitted by § 246.12(g)(3)(iv)(B)(*2*) of the proposed rule. Section 246.12(g)(3)(iv)(A)(*5*) of the proposed rule described such courtesies as helping a customer to find an item, bagging food, and assisting with loading food into the customer's vehicle, but these are only examples; other legitimate minimal customary courtesies may exist.

The legislative provision was intended to restrict the use of WIC funds by above-50-percent vendors to provide incentive items. (See House Committee on Education and the Workforce, Report No. 108–445, March 23, 2004, page 59, and Senate Committee on Agriculture, Nutrition, and Forestry, Report No. 108–279, June 7, 2004, page 58.) The legislative provision was not intended to infringe on the property rights of vendors to engage in legitimate for-profit business enterprises except to the extent that WIC funds are involved. Thus above-50-percent vendors must be permitted to engage in for-profit business enterprises that offer goods and services at a fair market value to WIC participants, since such goods and services would not be subsidized with WIC funds. Accordingly, the subject of for-profit business enterprises is addressed in § 246.12(g)(3)(iv)(C) of the final rule instead of § 246.12(g)(3)(iv). Section 246.12(g)(3)(iv)(C) states that for-profit business enterprises that offer goods or services at a fair market value to WIC participants are not incentive items subject to approval or prohibition, except that such goods or services must not constitute a conflict of interest or result in a liability for the WIC Program. Goods or services of a for-profit enterprise would include any kind of business enterprise, service or otherwise; for example, both the sale of diapers as well as a diaper service would be excluded from the restrictions on incentive items.

The State agency will need to determine whether a business enterprise offers its goods or services at a fair market value based on comparable for-profit businesses. However, § 246.12(h)(3)(xv) already provides the State agency with the authority to specify the records which must be maintained by the vendor and provided to the State agency upon request. Thus the State agency may require the vendor to show that the prices charged by its business enterprise are comparable to the prices charged by comparable for-profit business enterprises. Also, the State agency may require that the vendor provide more information.

The Department continues to believe that State agencies should have the discretion to permit or prohibit above-50-percent vendors from providing participants with the minimal customary courtesies of the retail food trade, as reflected in § 246.12(g)(3)(iv)(A) of the final rule.

Finally, the comment on § 246.12(g)(3)(iv)(B)(*7*) of the proposed rule was correct to point out that the legislative provision does not refer to services as an exception to the prohibition on incentive items; the only exceptions specified in the legislative provision are food or merchandise of nominal value. However, the commenter agreed with the proposed rule's exception for the minimal customary courtesies of the retail food trade even though the legislative provision does not specify an exception for such services. The Department concludes that, given the intent of the incentive items restrictions in the legislation, services should be treated the same as food or merchandise. As noted above, the point of these restrictions is to restrict the use of WIC funds by above-50-percent vendors to provide incentive items. Services also cost money, which, in the case of above-50-percent vendors, would be provided by WIC transactions. Thus incentive items in the form of services should be restricted to the same extent as incentive items in the form of food or merchandise. Accordingly, the term ''services'' has been added to § 246.12(g)(3)(iv)(A)(*1*) and (g)(3)(iv)(A)(*2*) of the final rule for the purpose of treating services in the same manner as food or merchandise.

Impact on Market-Competitive Above-50-Percent Vendors

In the proposed rule, the Department specifically solicited comments on whether there are circumstances in which a legitimately market-competitive above-50-percent vendor could be disadvantaged by the prohibition on providing incentives to non-WIC customers. Two commenters stated that the incentive items restrictions of the proposed rule would penalize non-WIC-only above-50-percent vendors, because these vendors are competing for the same customers with other non-WIC-only vendors which are not restricted in their use of incentive items. However, the legislative provision does not distinguish between WIC-only vendors and other above-50-percent vendors; the legislative provision treats all above-50-percent vendors the same. As previously noted, revision of legislative provisions is beyond the scope of this rule-making.

Miscellaneous Comments

One commenter stated that § 246.12(g)(3)(iv)(B)(2) of the proposed rule could be interpreted as ''all or nothing,'' instead of proposing to provide the State agency with the authority to allow some but not all kinds of allowable incentive items. The commenter recommended that this provision refer to any allowable incentive item, not all incentive items as a whole. The Department agrees. Accordingly, this provision has been deleted and replaced with language in § 246.12(g)(3)(iv)(A) of the final rule which clarifies that a State agency may approve any of the incentive items listed in paragraph (g)(3)(iv)(A) at its discretion.

One commenter stated that § 246.12(h)(8)(ii) of the proposed rule should have proposed that the vendor, not the State agency, be required to maintain the copies of the vendor invoices showing that each incentive item had been obtained at less than the $2 nominal value limit or at no cost. This commenter states that the nominal value limit should be enforced by State agency review or audit. For example, if a vendor is discovered to be providing incentive items to participants during a compliance buy investigation, the State agency could request copies of the invoices from the vendor. However, the statutory provision at 42 U.S.C. 1786(h)(14) requires that State agencies not authorize an above-50-percent vendor providing incentive items above

the nominal value limit. Consistent with this statutory provision, the proposed § 246.12(g)(3)(iv) would prohibit the authorization of above-50-percent vendors who provide prohibited incentive items. As previously noted, the State agency may provide the above-50-percent vendor with a list of pre-approved incentive items at authorization, in which case the State agency does not need to obtain vendor invoices. Otherwise, the need for such documentation arises initially at authorization. Accordingly, the proposed § 246.12(h)(8)(ii) has been revised in the final rule to state that the State agency must maintain this documentation unless the State agency provides the vendor with a list of pre-approved incentive items at authorization.

One commenter also requested clarification on whether advertising constitutes an actual or apparent conflict of interest by creating the impression that the WIC Program is the source of the advertisement, such as an advertisement providing a 1–888 telephone number for contacting the vendor about eligibility for a ''federal nutrition assistance program that helps pregnant women.'' Advertising is not subject to this final rulemaking because it was not addressed in the proposed rule. However, § 246.12(g)(3)(iv) of this final rule prohibits the authorization of an above-50-percent vendor which indicates an intention to provide prohibited incentive items to customers, and refers to advertising as evidence of such intent. Further, § 246.12(g)(3)(iv)(B)(*1*) of this final rule prohibits above-50-percent vendors from providing services which constitute conflicts of interest or appear to do so, such as assistance with applying for WIC benefits.

4. Adjusting Vendor Civil Money Penalty (CMP) Levels for Inflation (§ 246.12(l)(1)(x)(C) and (l)(2)(i))

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, 28 U.S.C 2461, requires adjustment of civil money penalty (CMP) levels to reflect inflation at least once every four years. This only applies to CMPs set forth in statutes. The only WIC vendor-related CMPs established in the CNA pertain to convictions in court for trafficking and illegal sales (§ 246.12(l)(1)(i)). Thus the Department's final rule implementing FCPIAA, ''Department of Agriculture Civil Monetary Penalties Adjustment,'' 70 FR 29573, May 24, 2005, only affected the WIC CMPs based on convictions in court for trafficking and illegal sales. As a result, the WIC CMP levels for all other vendor violations were not adjusted for inflation. This includes all CMPs for vendor violations that are addressed administratively by the State agency instead of through the courts. The Department believes that the amount of all CMPs should be uniform for all vendor violations. Accordingly, the proposed rule included provisions which would change the amount of the CMPs for the remaining WIC vendor violations to be consistent with the CMP levels based on convictions.

Four comments were submitted concerning these provisions. Three comments supported these provisions unconditionally. One comment supported the provisions conditionally. This commenter stated that any adjustment to CMP levels should be prospective, not retroactive, so that the inflation adjustment should commence with the effective date of the final rule as opposed to an immediate increase in the amount of those penalties. The Department agrees. The new CMP levels take effect on the effective date of the final rule, which, as noted above under **DATES,** is 60 days following the publication of the final rule in the **Federal Register**. The new CMP levels may not be implemented prior to that time.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

■ For the reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.4, revise the first sentence of paragraph (a)(14)(iii) and add a new paragraph (a)(14)(xvii) to read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(iii) A sample vendor and farmer, if applicable, agreement. The sample vendor agreement must include the sanction schedule, the process for notification of violations in accordance with § 246.12(l)(3), and the State agency's policies and procedures on incentive items in accordance with § 246.12(g)(3)(iv), which may be incorporated as attachments or, if the sanction schedule, the process for notification of violations, or policies on incentive items are in the State agency's regulations, through citations to the regulations. * * *

* * * * *

(xvii) *List of infant formula wholesalers, distributors, and retailers.* The policies and procedures for compiling and distributing to authorized WIC retail vendors, on an annual or more frequent basis, as required by § 246.12(g)(11), a list of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula. The vendor may provide only the authorized infant formula which the vendor has obtained from a source included on the list described in § 246.12(g)(11) to participants in exchange for food instruments specifying infant formula.

* * * * *

■ 3. In § 246.12:

■ a. Amend paragraph (g)(3)(i) by adding a sentence at the end of the paragraph.

■ b. Add new paragraphs (g)(3)(iv) and (g)(11).

■ c. Revise paragraph (h)(3)(ii).

■ d. Revise the third sentence of paragraph (h)(3)(xviii).

■ e. Add new paragraph (h)(8).

■ f. Revise paragraphs (i)(2) and (l)(1)(iv).

■ g. Amend the second sentence of paragraph (l)(1)(x)(C) by removing the word ''$10,000'' and adding in its place the words ''the maximum amount specified in § 3.91(b)(3)(v) of this title'';

■ h. Amend the third sentence of paragraph (l)(1)(x)(C) by removing the words ''$10,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the civil money penalty shall be the maximum amount per violation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.'' and adding in their place the words ''the maximum amount specified in § 3.91(b)(3)(v) of this title for each violation.'';

■ i. Amend the fifth sentence of paragraph (l)(1)(x)(C) by removing the words ''$40,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the total amount of civil money penalties may not exceed the maximum amount for violations

occurring during a single investigation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.'' and adding in their place the words ''the amount specified in § 3.91(b)(3)(v) of this title as the maximum penalty for violations occurring during a single investigation.'';

■ j. Amend paragraph (l)(2)(i) by removing the words ''$10,000 for each violation.'' in the fourth sentence, and adding in their place the words ''a maximum amount specified in § 3.91(b)(3)(v) of this title for each violation.'', by removing the word ''$40,000.'' in the fifth sentence, and adding in its place the words ''an amount specified in § 3.91(b)(3)(v) of this title as the maximum penalty for violations occurring during a single investigation.'';

■ k. Further amend paragraph (l)(2)(i) by adding a sentence at the end of the paragraph; and

■ l. Revise paragraph (l)(3).

The revisions and additions read as follows:

§ 246.12 Food delivery systems.

* * * * *

(g) * * *

(3) * * *

(i) * * * The State agency may not authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from sources included on the State agency's list described in paragraph (g)(11) of this section.

* * * * *

(iv) *Provision of incentive items.* The State agency may not authorize or continue the authorization of an above-50-percent vendor, or make payments to an above-50-percent vendor, which provides or indicates an intention to provide prohibited incentive items to customers. Evidence of such intent includes, but is not necessarily limited to, advertising the availability of prohibited incentive items.

(A) The State agency may approve any of the following incentive items to be provided by above-50-percent vendors to customers, at the discretion of the State agency:

(*1*) Food, merchandise, or services obtained at no cost to the vendor, subject to documentation;

(*2*) Food, merchandise, or services of nominal value, i.e., having a per item cost of less than $2, subject to documentation;

(*3*) Food sales and specials which involve no cost or less than $2 in cost to the vendor for the food items involved, subject to documentation, and do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument;

(*4*) Minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle.

(B) The following incentive items are prohibited for above-50-percent vendors to provide to customers:

(*1*) Services which result in a conflict of interest or the appearance of such conflict for the above-50-percent vendor, such as assistance with applying for WIC benefits;

(*2*) Lottery tickets provided to customers at no charge or below face value;

(*3*) Cash gifts in any amount for any reason;

(*4*) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

(*5*) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not exceed the less-than-$2 nominal value limit;

(*6*) Food, merchandise or services of greater than nominal value provided to the customer;

(*7*) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

(*8*) Any kind of incentive item which incurs a liability for the WIC Program;

(*9*) Any kind of incentive item which violates any Federal, State, or local law or regulations.

(C) For-profit goods or services offered by the above-50-percent vendor to WIC participants at a fair market value based on comparable for-profit goods or services of other businesses are not incentive items subject to approval or prohibition, except that such goods or services must not constitute a conflict of interest or result in a liability for the WIC Program.

* * * * *

(11) *List of infant formula wholesalers, distributors, and retailers licensed under State law or regulations, and infant formula manufacturers registered with the Food and Drug Administration (FDA).* The State agency must provide a list in writing or by other effective means to all authorized WIC retail vendors of the names and addresses of infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations), and infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, on at least an annual basis.

(i) *Notification to vendors.* The State agency is required to notify vendors that they must purchase infant formula only from a source included on the State agency's list, or from a source on another State agency's list if the vendor's State agency permits this, and must only provide such infant formula to participants in exchange for food instruments specifying infant formula. For the purposes of paragraph (g)(11) of this section, ''infant formula'' means *Infant formula, Contract brand infant formula* and *Non-contract brand infant formula* as defined in § 246.2, and infant formula covered by a waiver granted under § 246.16a(e).

(ii) *Type of license.* If more than one type of license applies, the State agency may choose which one to use.

(iii) *Exclusions from list.* The State agency may not exclude a State-licensed entity from the list except when:

(A) Specifically required or authorized by State law or regulations; or

(B) The entity does not carry infant formula.

(h) * * *

(3) * * *

(ii) *No substitutions, cash, credit, refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the food instrument and cash-value voucher.

(A) The vendor may not provide unauthorized food items, nonfood items, cash, or credit (including rain checks) in exchange for food instruments or cash-value vouchers. The vendor may not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its ''sell by,'' ''best if used by,'' or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand and size as the original authorized supplemental food item obtained and returned by the participant.

(B) The vendor may provide only the authorized infant formula which the vendor has obtained from sources included on the list described in paragraph (g)(11) of this section to participants in exchange for food instruments specifying infant formula.

* * * * *

(xviii) * * * The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

* * * * *

(8) *Allowable and prohibited incentive items for above-50-percent vendors.* The vendor agreement for an above-50-percent vendor, or another document provided to the vendor and cross-referenced in the agreement, must include the State agency's policies and procedures for allowing and prohibiting incentive items to be provided by an above-50-percent vendor to customers, consistent with paragraph (g)(3)(iv) of this section.

(i) The State agency must provide written approval or disapproval (including by electronic means such as electronic mail or facsimile) of requests from above-50-percent vendors for permission to provide allowable incentive items to customers;

(ii) The State agency must maintain documentation for the approval process, including invoices or similar documents showing that the cost of each item is either less than the $2 nominal value limit, or obtained at no cost, unless the State agency provides the vendor with a list of pre-approved incentive items at the time of authorization; and

(iii) The State agency must define prohibited incentive items.

(i) * * *

(2) *Content.* The annual training must include instruction on the purpose of the Program, the supplemental foods authorized by the State agency, the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors, the requirement that vendors obtain infant formula only from sources included on a list provided by the State agency, the procedures for transacting and redeeming food instruments and cash-value vouchers, the vendor sanction system, the vendor complaint process, the claims procedures, the State agency's policies and procedures regarding the use of incentive items, and any changes to program requirements since the last training.

* * * * *

(l) * * *

(1) * * *

(iv) *One-year disqualification.* The State agency must disqualify a vendor for one year for:

(A) A pattern of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental foods provided in excess of those listed on the food instrument; or

(B) A pattern of an above-50-percent vendor providing prohibited incentive items to customers as set forth in paragraph (g)(3)(iv) of this section, in accordance with the State agency's policies and procedures required by paragraph (h)(8) of this section.

* * * * *

(2) * * *

(i) * * * A State agency vendor sanction must be based on a pattern of violative incidences.

* * * * *

(3) *Notification of violations.* The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. This notification requirement applies to the violations set forth in paragraphs (l)(1)(iii)(C) through (l)(1)(iii)(F), (l)(1)(iv), and (l)(2)(i) of this section.

(i) Prior to imposing a sanction for a pattern of violative incidences, the State agency must either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such notice would compromise an investigation.

(ii) The State agency may use the same method of notification which the State agency uses to provide a vendor with adequate advance notice of the time and place of an administrative review in accordance with § 246.18(b)(3).

(iii) If notification is provided, the State agency may continue its investigation after the notice of violation is received by the vendor, or presumed to be received by the vendor, consistent with the State agency's procedures for providing such notice.

(iv) All of the incidences of a violation occurring during the first compliance buy visit must constitute only one incidence of that violation for the purpose of establishing a pattern of incidences.

(v) A single violative incidence may only be used to establish the violations set forth in paragraphs (l)(1)(ii)(A), (l)(1)(ii)(B), and (l)(1)(iii)(A) of this section.

* * * * *

■ 4. In § 246.18, redesignate paragraphs (a)(1)(iii)(D) through (a)(1)(iii)(H) as paragraphs (a)(1)(iii)(G) through (a)(1)(iii)(K) and add new paragraphs (a)(1)(iii)(D), (a)(1)(iii)(E), and (a)(1)(iii)(F), to read as follows:

§ 246.18 Administrative review of State agency actions.

(a) * * *

(1) * * *

(iii) * * *

(D) The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to § 246.12(g)(11);

(E) The validity or appropriateness of the State agency's prohibition of incentive items and the State agency's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to § 246.12(h)(8);

(F) The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction, pursuant to § 246.12(l)(3);

* * * * *

Dated: December 23, 2008.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: This Appendix will not appear in the Code of Federal Regulations.

Title: Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Discretionary WIC Vendor Provisions in the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265.

Date: December 11, 2008.

Agency: USDA, Food and Nutrition Service.

Contact: Ed Harper.

Phone: (703) 305–2340.

Fax: (703) 305–2576.

E-mail: Edward.Harper@fns.usda.gov.

Action:

a. *Nature:* Final Rule.

b. *Need:* This rule amends regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) by adding three retail vendor provisions mandated by the Child Nutrition and WIC Reauthorization Act of 2004. The

amendments are intended to (1) Strengthen the due process accorded to vendors found to be in violation of program rules, (2) reduce the risk that mislabeled, improperly stored, expired, or stolen infant formula is distributed to WIC participants, and (3) ensure that program funds are not used to subsidize the distribution of incentive items by vendors who derive more than fifty percent of their food sales revenue from WIC.

The rule also restores uniformity to the WIC vendor civil money penalty (CMP) system by indexing all maximum CMP amounts for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) requires periodic adjustment of CMP levels to reflect inflation. However, the Act applies only to CMPs identified by statute. The only WIC vendor-related CMPs that are covered by the FCPIAA are those imposed following a conviction for trafficking or illegal sales. As a result, the CMP caps for those violations are the only WIC vendor sanctions subject to an inflation adjustment; the maximum penalties for other vendor violations are not. This rule would restore uniformity to the WIC CMP system by making an initial upward adjustment to the maximum CMP amount for penalties not covered by the FCPIAA, and then subjecting all CMP maximums to the same future inflation adjustments.

c. *Affected Parties:* The parties affected by this regulation are the USDA's Food and Nutrition Service (FNS), State agencies that administer the WIC program, retail vendors that are authorized to accept WIC food instruments, and infant formula wholesalers, distributors, retailers, and manufacturers.

Action
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Alternatives
1. State agency discretion in giving notice to vendors of initial program violations
2. Requirement that State agencies determine whether to withhold or provide notice of initial vendor violations on a case by case basis

Background

This rule amends the regulations of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) by adding three vendor-related requirements mandated by the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265. The rule also restores uniformity to the maximum CMP amounts imposed on vendors for violation of program rules. These changes are described in greater detail below.

Vendor Notification

Penalties for some WIC vendor violations are not imposed until a vendor is found to have engaged in a pattern of improper behavior. In an effort to discourage repeat violations of the same program rules, and to strengthen due process for vendors accused of violations, this rule requires WIC State agencies to provide WIC vendors with written notice of an initial violation. The rule provides an exception for cases where State agencies determine that notification would compromise an ongoing investigation.

Authorized Infant Formula Suppliers

The rule requires State agencies to maintain lists of State-licensed wholesalers, distributors, and retailers, and infant formula manufacturers registered with the Food and Drug Administration. These lists must be distributed by the State agencies to their authorized WIC vendors, and must be included, directly or by reference, in the State agencies' WIC State Plans. In order to prevent defective formula from reaching WIC participants, the rule requires WIC vendors to purchase infant formula only from sources on those lists.

Incentive Items

Retailers that serve WIC clients exclusively (''WIC-only'' stores) have traditionally offered incentive items or free services to their customers. These incentives are one way that WIC-only stores compete with other retailers; WIC-only stores do not attract WIC clients based on the price of their products. In order to prevent WIC program funds from subsidizing these incentives through federal reimbursement of inflated store prices, the rule prohibits the use of most incentives by WIC-only vendors and by the broader group of retailers that derive more than 50 percent of their food sales revenue from WIC food instruments. The rule would continue to allow WIC-authorized vendors to offer incentives of nominal value, and incentives acquired by vendors at no cost.

Civil Money Penalties

The rule subjects all maximum civil money penalty (CMP) levels to periodic inflation adjustments. CMPs are levied against WIC vendors for program violations. This provision restores consistency to the penalty system. Under current rules, the maximum CMP for most vendor violations is fixed; the only CMP maximum amounts that are subject to periodic inflation adjustments are those imposed for trafficking and illegal sales violations that result in convictions in court.[1] As a result, the maximum CMP varies by type of violation. To correct this, the rule makes an immediate adjustment to the maximum penalty amounts that had not previously been subject to inflation adjustments. On enactment of the rule, the maximum penalty for those violations will be raised to $11,000 from $10,000 per incident; the total maximum CMP for all violations committed during a single investigation will be raised to $44,000 from $40,000. In future years, the maximum penalty

[1] These violations are covered by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461).

amounts for all violations will be subject to the same inflation adjustment.

With the exception of the CMP inflation provision, the changes proposed by this rule were mandated by Congress. They were effective October 1, 2004. FNS issued policy and guidance to WIC State agencies to implement these mandatory provisions in December 2004 and April 2005. This rule reflects the earlier policy, guidance, and proposed rule issued by FNS.

Summary of Key Provisions

Table 1: Regulatory Language and Effects of the Rule

Current Provision Authorized infant formula manufacturers, wholesalers, distributors, and retailers	Proposed Rule Authorized infant formula manufacturers, wholesalers, distributors, and retailers	Final Rule Authorized infant formula manufacturers, wholesalers, distributors, and retailers	Rule's Effects
§246.4(a)(14) – State plans No provision regarding State-licensed and FDA-registered infant formula suppliers.	**§ 246.4(a)(14)(xvii) – State plans** States must include in their State plans a set of policies and procedures for compiling and distributing to WIC vendors a list of FDA-registered infant formula manufacturers, and State-licensed wholesalers, retailers and distributors.	**§246.4(a)(14)(xvii) – State plans** States must include in their State plans a set of policies and procedures for compiling and distributing to WIC vendors a list of FDA-registered infant formula manufacturers, and State-licensed wholesalers, retailers and distributors.	**USDA / FNS:** Reduces the possibility that Federal dollars will be used to purchase stolen, expired, contaminated, or unauthorized infant formula. FNS supplies the list of FDA-registered manufacturers of infant formula to the State agencies. **State WIC agencies:** Modest annual increase in administrative burden to compile and distribute the list of authorized infant formula suppliers to WIC vendors. State agencies must contact their State licensing agencies to obtain the list of licensed wholesalers, distributors, and retailers. (States are given the list of FDA-registered infant formula manufacturers by FNS). Minimal annual increase in administrative burden to update WIC State plans to include policies and procedures for compiling and distributing the lists to authorized vendors.
§ 246.12(g) – vendor authorization No provision regarding State-licensed and FDA-registered infant formula suppliers.	**§ 246.12(g)(3)(i) – vendor authorization, selection criteria, minimum variety and quantity of supplemental foods** The State agency may not authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from sources included on the State agency's list.	**§ 246.12(g)(3)(i) – vendor authorization, selection criteria, minimum variety and quantity of supplemental foods** The State agency may not authorize a vendor applicant unless it determines that the vendor applicant obtains infant formula only from sources included on the State agency's list.	**Infant formula wholesalers, distributors, retailers, and manufacturers:** Reduces possible loss of business to unapproved wholesalers, distributors, retailers and manufacturers. **Authorized retail vendors:** Minimal cost to deal only with authorized formula suppliers and manufacturers. Compliance with the rule reduces the possibility that vendors will purchase stolen, expired, or contaminated formula. **WIC participants:** Helps guarantee the safety
	§246.12(g)(10) **§246.12(g)(10)(i), (ii), (iii) – vendor authorization, list of authorized formula suppliers**	**§246.12(g)(11),** **§246.12(g)(11)(i), (ii), (iii) – vendor authorization, list of authorized formula suppliers**	

	The state agency must provide the list, with addresses, to all authorized WIC vendors. The State agency must notify vendors that they must purchase infant formula from the sources on the State's list (or on another State's list, if the State agency chooses to allow that). The State agency may not exclude a State-licensed entity from the list unless permitted or required by State law.	The state agency must provide the list, with addresses, to all authorized WIC vendors. The State agency must notify vendors that they must purchase infant formula from the sources on the State's list (or on another State's list, if the State agency chooses to allow that). The State agency may not exclude a State-licensed entity from the list unless permitted or required by State law.	and quality of infant formula consumed.
§246.12(h)(3)(ii) – vendor agreements No provision regarding State-licensed and FDA-registered infant formula suppliers.	**§ 246.12(h)(3)(ii) – vendor agreements** The vendor agreement must contain language that restricts the vendor to providing its WIC customers only infant formula that the vendor obtained from sources on the State's authorized supplier and manufacturer list.	**§246.12(h)(3)(ii) – vendor agreements** The vendor agreement must contain language that restricts the vendor to providing its WIC customers only infant formula that the vendor obtained from sources on the State's authorized supplier and manufacturer list.	
§246.12(i)(2) – State vendor training No provision regarding State-licensed and FDA-registered infant formula suppliers.	**§246.12(i)(2) – State vendor training** Annual vendor training must cover the requirement that vendors obtain infant formula only from sources on the State agency list.	**§246.12(i)(2) – State vendor training** Annual vendor training must cover the requirement that vendors obtain infant formula only from sources on the State agency list.	
§246.18 - Administrative review of State agency actions: actions not subject to review by vendors No provision regarding State-licensed and FDA-registered infant formula suppliers.	**§246.18(a)(1)(iii)(D) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decision to include or exclude an infant formula manufacturer, wholesaler,	**§246.18(a)(1)(iii)(D) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decision to include or exclude an infant formula manufacturer, wholesaler,	

	distributor, or retailer from the State agency list is not subject to administrative review.	distributor, or retailer from the State agency list is not subject to administrative review.	
Incentive items – above-50-percent vendors	**Incentive items – above-50-percent vendors**	**Incentive items – above-50-percent vendors**	**USDA / FNS:** Protects WIC program from overpaying for WIC foods. Should lower program costs.
§246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system No provision regarding incentive items.	**§ 246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system** The sample vendor agreement that must be contained in the State agency plan's food delivery system description must make reference to the State agency's policies on incentive items.	**§246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system** The sample vendor agreement that must be contained in the State agency plan's food delivery system description must make reference to the State agency's policies on incentive items.	**State WIC agencies:** Modest increase in administrative burden to establish a policy and process for approving or denying requests by above-50-percent vendors to offer incentive items. Modest increase in burden to include or refer to these policies in the agencies' State Plans and vendor agreements. Modest increase in burden associated with responding to individual vendor requests for incentive item approval, and for maintaining documentation of individual approvals. Reduces payments to above-50-percent vendors.
§ 246.12(g) – vendor authorization No provision regarding incentive items.	**§ 246.12(g)(3)(iv) – vendor authorization, selection criteria, provision of incentive items** State agencies may not authorize, continue to authorize, or make payments to above-50-percent vendors who distribute or intend to distribute prohibited incentive items to customers.	**§246.12(g)(3)(iv) – vendor authorization, selection criteria, provision of incentive items** State agencies may not authorize, continue to authorize, or make payments to above-50-percent vendors who distribute or intend to distribute prohibited incentive items to customers.	**Infant formula wholesalers, distributors, retailers, and manufacturers:** None
	§246.12(g)(3)(iv)(A) Permissible incentives are food or merchandise of nominal value (less than $2) or obtained at no cost by the retailer. Also allowed are food sales and specials which involve no cost or less than $2 in cost to the vendor.	**§246.12(g)(3)(iv)(A)** Permissible incentives are food, merchandise, or services of nominal value (less than $2) or obtained at no cost by the retailer. Also allowed are food sales and specials which involve no cost or less than $2 in cost to the vendor. Permissible incentives also include minimal	**Authorized retail vendors:** Vendors that previously relied on incentive items to attract customers may lose revenue. Vendors that did not previously rely on incentive items may win new customers. Vendors that continue to offer unauthorized or disallowed incentives face program sanctions.
			WIC participants: Participants may receive fewer incentives, but those incentives are not program benefits.

		customary courtesies of the retail trade (bagging, loading bags in customer's car, etc.)
	§246.12(g)(3)(iv)(B) Impermissible incentives include lottery tickets offered at no charge or below face value, cash of any value, services which create a conflict of interest (such as assistance applying for WIC benefits), complimentary gifts made available in a public area, food or merchandise offered below cost, and, at the discretion of the State agency, any incentive allowed under §246.12(g)(3)(iv)(A)	**§246.12(g)(3)(iv)(B)** Impermissible incentives include lottery tickets offered at no charge or below face value, cash of any value, services which create a conflict of interest (such as assistance applying for WIC benefits), complimentary gifts made available in a public area, food, merchandise, or services offered below cost, any item which violates Federal, State, or local law, and, at the discretion of the State agency, any incentive allowed under §246.12(g)(3)(iv)(A)
		§246.12(g)(3)(iv)(C) Items sold at fair market value are not incentive items subject to approval or prohibition. However, they must not constitute a conflict of interest or result in a liability for the WIC program.
§246.12(h) – vendor agreements No provision regarding incentive items.	**§ 246.12(h)(8) – vendor agreements, allowable and prohibited incentive items for above-50-percent vendors** Vendor agreements for above-50-percent vendors (or other documents referenced in the agreements) must include the State agency's policy on incentive items.	**§246.12(h)(8) – vendor agreements, allowable and prohibited incentive items for above-50-percent vendors** Vendor agreements for above-50-percent vendors (or other documents referenced in the agreements) must include the State agency's policy on incentive items.

	§246.12(h)(8)(i), (ii), (iii) The State agency must provide written approval or disapproval of requests by above-50-percent vendors to offer incentive items. The State agency must maintain documentation showing that the items are obtained at no cost or fall below the nominal value limit. The State agency must define disallowed incentive items.	**§246.12(h)(8)(i), (ii), (iii)** The State agency must provide written approval or disapproval of requests by above-50-percent vendors to offer incentive items. The State agency must maintain documentation showing that the items are obtained at no cost or fall below the nominal value limit. The State agency must define disallowed incentive items.
§246.12(i)(2) – State vendor training, content No provision regarding incentive item training.	**§246.12(i)(2) – State vendor training, content** Annual vendor training must cover the State agency's policies and procedures regarding the use of incentive items.	**§246.12(i)(2) – State vendor training, content** Annual vendor training must cover the State agency's policies and procedures regarding the use of incentive items.
§246.12(l)(1)(iv) – Retail food delivery systems, vendor sanctions – one year disqualification No provision regarding incentive items	**§ 246.12(l)(1)(iv) – Retail food delivery systems, vendor sanctions – one year disqualification** The State agency must disqualify an above-50-percent vendor for one year for a pattern of offering prohibited incentive items to its WIC customers.	**§246.12(l)(1)(iv) – Retail food delivery systems, vendor sanctions – one year disqualification** The State agency must disqualify an above-50-percent vendor for one year for a pattern of offering prohibited incentive items to its WIC customers.
§246.18 - Administrative review of State agency actions: actions not subject to review by vendors No provision regarding State agency decisions on permissible for impermissible incentive items	**§246.18(a)(1)(iii)(E) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decisions on permissible for impermissible incentive items are not subject to administrative review.	**§246.18(a)(1)(iii)(E) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decisions on permissible for impermissible incentive items are not subject to administrative review.

Notification of vendor violations - sanctions	Notification of vendor violations - sanctions	Notification of vendor violations - sanctions	
§246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system No provision regarding notification of certain initial vendor violations.	**§ 246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system** The sample vendor agreement that must be contained in the State agency plan's food delivery system description must make reference to the State agency's process for notification of certain initial vendor violations.	**§246.4(a)(14)(iii) – State agency plan: vendor agreement, description of food delivery system** The sample vendor agreement that must be contained in the State agency plan's food delivery system description must make reference to the State agency's process for notification of certain initial vendor violations.	**USDA / FNS:** To the extent that notification of initial vendor violations forestalls subsequent violations, program performance measures should improve; this improvement might take the form of a reduction in over- and under-payments. FNS will realize additional savings to the extent that vendor and customer fraud is reduced.. **State WIC agencies:** Modest increase in administrative burden of issuing notice to vendors of initial violations or, alternatively, of documenting why giving notice would compromise an ongoing investigation. At the same time, States will realize a reduction in the cost of administering and enforcing sanctions. The States, like FNS, will benefit from improved program performance and a reduction in improper payments and fraud. **Infant formula wholesalers, distributors, retailers, and manufacturers:** None **Authorized retail vendors:** Notice given after an initial program violation gives vendors an opportunity to avoid costly sanctions. **WIC participants:** No direct or immediate benefit. However, the sanction provisions should improve program integrity, to the long-term benefit of future participants.
§246.12(h)(3)(xviii) – vendor agreements, sanctions In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification. The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing such sanctions.	**§ 246.12(h)(3)(xviii) – vendor agreements, sanctions** In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification. The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.	**§246.12(h)(3)(xviii) – vendor agreements, sanctions** In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification. The State agency must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.	

§246.12(l)(2)(i) – State agency vendor sanctions No provision regarding a pattern of violations uncovered during compliance buys before a State agency sanction can be imposed..	**§246.12(l)(2)(i) – State agency vendor sanctions** No provision regarding a pattern of violations uncovered during compliance buys before a State agency sanction can be imposed..	**§246.12(l)(2)(i) – State agency vendor sanctions** A State agency vendor sanction must be based on a pattern of violations if identified during compliance buys.
§246.12(l)(3) – Vendor sanctions – prior warning The State agency does not have to warn a vendor that violations had been detected before imposing mandatory or State agency vendor sanctions.	**§ 246.12(l)(3) – Vendor sanctions – notification of violations** The State agency must provide written notice when a compliance buy investigation reveals a violation for which a pattern must be established in order to impose a sanction. An exception is permitted if the State determines that such notice would compromise an investigation. This applies to all violations in §§(l)(1)(iii)(C) through (l)(1)(iii)(F), (l)(1)(iv), and (l)(2)(i) (essentially all sanctions for overcharges, unauthorized sales, and State agency-determined violations; it excludes trafficking, fraud, and exchange of WIC instruments for firearms, controlled substances, alcohol, or tobacco). **§246.12(l)(3)(i), (ii), (iii), (iv)** Vendors must be given written notice of an initial violation before imposing a sanction for a pattern of violations unless documentation explaining why notice would	**§246.12(l)(3) – Vendor sanctions – notification of violations** The State agency must provide written notice when a compliance buy investigation reveals a violation for which a pattern must be established in order to impose a sanction. An exception is permitted if the State determines that such notice would compromise an investigation. This applies to all violations in §§(l)(1)(iii)(C) through (l)(1)(iii)(F), (l)(1)(iv), and (l)(2)(i) (essentially all sanctions for overcharges, unauthorized sales, and State agency-determined violations; it excludes trafficking, fraud, and exchange of WIC instruments for firearms, controlled substances, alcohol, or tobacco). **§246.12(l)(3)(i), (ii), (iii), (iv)** Vendors must be given written notice of an initial violation before imposing a sanction for a pattern of violations unless documentation explaining why notice would

	compromise an investigation is placed in the vendor file. The same method used to notify vendors of the time and place of an administrative review can be used to notify the vendor of an initial violation. The State may resume compliance buys once the vendor receives notice of the initial violation. All incidences of a violation uncovered in an initial compliance buy constitute a single instance for purposes of establishing a pattern of violations.	compromise an investigation is placed in the vendor file. The same method used to notify vendors of the time and place of an administrative review can be used to notify the vendor of an initial violation. The State may resume compliance buys once the vendor receives notice of the initial violation. All incidences of a violation uncovered in an initial compliance buy constitute a single instance for purposes of establishing a pattern of violations. **§246.12(l)(3)(v)** State agency-established vendor violations cannot be imposed after a single violation uncovered in a compliance buy. The only sanctions that can be imposed after a single compliance buy violation are those for trafficking, illegal sales, and exchange of alcohol or tobacco for WIC food instruments.
§246.18 - Administrative review of State agency actions: actions not subject to review by vendors No provision regarding a State agency's decision whether to notify a vendor in writing after certain initial program violations.	**§246.18(a)(1)(iii)(F) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decision whether to notify a vendor in writing after certain initial program violations is not subject to administrative review.	**§246.18(a)(1)(iii)(F) - Administrative review of State agency actions: actions not subject to review by vendors** The State agency's decision whether to notify a vendor in writing after certain initial program violations is not subject to administrative review.

Inflation of Civil Money Penalty Maximums	**Inflation of Civil Money Penalty Maximums**	**Inflation of Civil Money Penalty Maximums**	**USDA / FNS:** Uniformity in maximum CMP amounts should simplify administration and ease enforcement.
§246.12(l)(1)(x)(C) – Mandatory vendor sanctions: civil money penalty formula The maximum CMP for violations that warrant permanent vendor disqualification (other than those involving benefit trafficking or the sale of firearms, ammunition, explosives, or controlled substances in exchange for food instruments) is $10,000 per violation or $40,000 per investigation.	**§246.12(l)(1)(x)(C) – Mandatory vendor sanctions: civil money penalty formula** The maximum CMP for violations that warrant permanent vendor disqualification are those specified in §3.91(b)(3)(v).	**§246.12(l)(1)(x)(C) – Mandatory vendor sanctions: civil money penalty formula** The maximum CMP for violations that warrant permanent vendor disqualification are those specified in §3.91(b)(3)(v).	**State WIC agencies:** no significant effect. Increase in maximum CMPs may have a slight effect on penalty income available to the State agencies for food or NSA costs.
			Infant formula wholesalers, distributors, retailers, and manufacturers: None
			Authorized retail vendors: increased maximum penalty amounts for some violations.
			WIC participants: None
§246.12(l)(2)(i) – State agency vendor sanctions State agency-assessed CMPs shall not exceed $10,000 per violation or $40,000 per investigation.	**§246.12(l)(2)(i) – State agency vendor sanctions** State agency-assessed CMP maximums are those specified in §3.91(b)(3)(v).	**§246.12(l)(2)(i) – State agency vendor sanctions** State agency-assessed CMP maximums are those specified in §3.91(b)(3)(v).	

Cost/Benefit Assessment of Economic and Other Effects

The provisions of this rule are expected to improve WIC program performance and integrity by reducing the incidence of program violations by WIC-authorized vendors, minimizing the expenditure of program funds on non-program vendor incentive items, and ensuring the quality of infant formula distributed to WIC participants. The rule also establishes a uniform system of adjusting the maximum WIC CMP amounts for inflation.

Costs

Several provisions of the rule are expected to increase slightly the administrative burden faced by State WIC agencies. The total expected increase in costs is $0.66 million over five years.

1. Reporting

State WIC agencies are required to develop a sample vendor agreement that details their policies and procedures concerning the rule's vendor notification and incentive item provisions. The sample vendor agreement must be included (by attachment or citation) in the agencies' WIC State Plans. FNS estimates that this provision (§ 246.4(a)(14)(iii)) will increase the administrative burden faced by each State agency by one hour per year.

State agencies must also develop a set of policies and procedures for compiling and distributing to WIC vendors a list of State-licensed infant formula wholesalers, distributors, and retailers, and FDA-registered manufacturers. These policies must also be included, directly or by citation, in the agencies' State Plans. FNS estimates that this provision (§ 246.4(a)(14)(xvii)) will also add one hour annually to the States' administrative burden.

The rule requires State agencies to establish a system to review requests by above-50-percent vendors who wish to offer incentive items to their WIC customers (§ 246.12(h)(8)). The cost to vendors of submitting requests for approval is a reporting cost. As of early 2008, thirty-two State WIC agencies authorized above-50-percent WIC vendors.[2] FNS estimates that roughly half of these States both permit their above-50-percent vendors to offer incentive items and require them to seek individual State agency approval for each proposed incentive. Given that there are 1,700 authorized above-50-percent WIC vendors nationwide, this suggests that 850 vendors will submit individual incentive items to State agencies for approval. FNS estimates that the administrative burden of these requests will average one hour per vendor per year.

2. Recordkeeping

State WIC agencies must develop, maintain, and distribute to WIC vendors a list of State-licensed infant formula wholesalers, distributors, and retailers, and FDA-registered manufacturers. FNS provides the State agencies with the list of FDA-registered manufacturers. State agencies are responsible for compiling their own lists of wholesalers, distributors, and retailers licensed in their States. State agencies are required to update and distribute these lists to their WIC vendors at least annually. FNS estimates that this task (§ 246.12(g)(11)) will require 50 hours of administrative work per State agency per year.

As noted in the discussion of reporting burdens, the rule requires State agencies to develop a set of procedures for approval or disapproval of requests by above-50-percent vendors to offer particular incentive items to their customers. The rule gives the States some flexibility in implementing this provision. State agencies may choose to issue written approval or disapproval in response to each vendor request to offer a particular incentive. This relatively labor-intensive option would require that the States maintain documentation of each vendor request. The documentation would include invoices or receipts that verify the cost to the vendor of the proposed incentive. Alternatively, State agencies could develop a pre-approved list of acceptable incentive items. Vendors would select vendor items from the approved list and submit those selections to the State agency along with its signed WIC vendor agreement. That process would relieve the State agency from having to respond to individual vendor requests for incentive item approval.

FNS assumes that half of the thirty-two State WIC agencies that authorize above-50-percent WIC vendors will spend one hour per year on each one of an estimated 850 vendor incentive item requests. This suggests an annual recordkeeping burden for this provision (§ 246.12(h)(8)) of roughly 850 hours.[3]

Finally, the rule requires State agencies to notify a vendor in writing of an initial program violation, for violations of the type that require a second offense before a sanction is imposed, unless notification would compromise an ongoing investigation. Approximately 2,300 of the vendors who are investigated annually commit violations that require a pattern before a sanction can be imposed. If each notice requirement consumes, on average, one hour to process, then the total administrative burden of this provision (§ 246.12(l)(3)) is about 2,300 hours.

The total administrative cost of this rule, in terms of hours spent in compliance, is summarized in Table 2[4]:

[2] FNS program data.

[3] This estimate assumes that the administrative burden faced by State agencies that make use of pre-approved incentive item lists is insignificant.

[4] The ''annual frequency'' figures in table 2 are just the estimated number of hours divided by the number of respondents. The annual frequencies are shown rounded to the nearest integer.

TABLE 2—ADMINISTRATIVE COST SUMMARY

[Burden hours]

Section of Regulations	Annual number of respond-ents	Annual frequency	Average burden hours per response	Annual burden hours
New Reporting Burden:				
§ 246.4(a)(14)(iii)	90	1	1	90
§ 246.4(a)(14)(xvii)	90	1	1	90
§ 246.12(h)(8) vendors	850	1	1	850
Total New Reporting Burden in the Final Rule	.....	.....	.....	1,030
New Recordkeeping Burden:				
§ 246.12(g)(11)	90	1	50	4,500
§ 246.12(h)(8)	16	53	1	850
§ 246.12(1)(3)	90	26	1	2,300
Total New Recordkeeping Burden in the Final Rule	.....	.....	.....	7,650
Reporting and Recordkeeping Burden				
Total New Reporting and Recordkeeping Burden in the Final Rule	.....	.....	.....	8,860

Table 3 applies an average hourly wage rate to the estimated increase in administrative burden hours to estimate the total administrative cost of the rule [5]:

TABLE 3—COST OF ADMINISTRATIVE BURDEN

FY	Hours	Wage rate	Total cost (millions)
2008	8,680	$16.09	$0.14
2009	8,680	16.69	0.14
2010	8,680	17.30	0.15
2011	8,680	17.94	0.16
2012	8,680	18.61	0.16
Total	.....	.....	$0.75

[5] Wages and salaries for state and local government office and administrative support occupations, first quarter, FY 2008. *Employer Costs for Employee Compensation,* U.S. Department of Labor, Bureau of Labor Statistics. (*http://www.bls.gov/data/home.htm*)

The wage rate is inflated by the projected increase in the State and Local Expenditure Index. Office of Management and Budget projections for the President's FY 2009 Budget.

Benefits

1. Incentive Items

FNS collects no data on the type or value of incentive items that were offered by above-50-percent vendors to their WIC customers prior to passage of the 2004 Child Nutrition and WIC Reauthorization Act. Nor does FNS know how frequently such incentives were distributed by the typical vendor. However, among WIC-only stores (a subset of the broader category of above-50-percent vendors), incentive items were routinely offered as part of a typical marketing strategy.[6] In 2004, approximately 2.5 percent of WIC vendors were WIC-only. That relatively small group, however, accounted for a disproportionate 12 percent of 2004 WIC redemptions.[7]

At least some of the incentives offered before the 2004 Reauthorization Act were worth far more than this rule's $2 nominal limit. Senate Report 108–279, which accompanied the 2004 Reauthorization Act, cites ''appliances, pots and pans, bicycles, food items such as tortillas, and cash'' among the incentives offered by WIC-only stores.

Although this information does not permit the development of a quality numeric estimate of the total value of incentive items offered to WIC customers prior to enactment of the 2004 Reauthorization Act, it does suggest that the value could have been substantial.[8] The computation shown below is not intended to estimate the value of this rule's incentive item reforms with any precision. Instead, it is intended to demonstrate that even with very conservative assumptions, the administrative costs of this rule are almost certainly outweighed by the program savings of this one reform.

[6] WIC-only vendors do not compete for WIC customers on the price of their products. Incentives (including merchandise, food, and services) were, and remain, one way that WIC-only stores try to differentiate themselves from their competition.

[7] Data on the number, location and redemptions of WIC-only stores is reported to FNS annually in The Integrity Profile (TIP).

[8] The rule's restriction on incentive items is intended to prevent vendors from covering their costs of acquiring incentives by raising the prices that they charge the program for WIC foods. The value of the incentives offered by vendors is therefore an indirect cost to the WIC program.

850	Assume that 850 above-50-percent vendors currently offer incentive items to their WIC customers.[9]
÷ 48,297	Total number of WIC-authorized vendors.[10]
1.8%	Assume that this 1.8% of vendors serve a number of WIC participants exactly proportionate to their share of all WIC authorized vendors.[11]
× 4,577,348	Estimated number of households served monthly by WIC, FY 2007[12] (Total Participation/1.81).[13]
80,559	Number of incentive item recipients.
× $5.00	Assume each WIC household received just one $5 incentive item per year before the 2004 Reauthorization Act.[14]
$402,794	Annual value of incentives that would have been distributed annually in the absence of the 2004 Reauthorization Act.
− $161,117	Value of incentives if capped at the $2 nominal value of this rule.[15]
$241,676	Estimated Annual Savings from this rule.

Even with assumptions that almost certainly understate the numbers at each step in this computation, the annual savings from this provision of the rule alone far exceed the estimated annual administrative costs developed earlier.[16]

2. Vendor Notification of Initial Program Violations

This provision of the rule is designed to encourage WIC-authorized vendors to correct behavior after being informed by State agencies of an initial program violation. In addition to enhancing the due process accorded to WIC vendors, the new rule is expected to increase vendor compliance with program rules. Improved compliance with program rules may have economic benefits; it also has the potential to improve the health outcomes of WIC participants.

The most serious program violations mandate the imposition of sanctions after an initial occurrence.[17] The rule does not change the way that these violations are handled. However, the rule should reduce repeat occurrences of vendor violations such as overcharging the program, claiming reimbursement for sales not supported by inventory records, exchanging WIC food instruments for non-WIC foods or merchandise, and transacting food instruments outside of proper channels. To the extent that the rule is effective at reducing repeat occurrences of overcharging, the program will realize direct dollar savings.[18] Reduction in the repeat occurrence of the other violations listed here will enhance program effectiveness. A direct dollar value cannot be placed on that benefit. However, if fewer WIC food instruments are redeemed for non-WIC foods or merchandise, then the ultimate health outcomes of WIC participants may be improved.

Although it is true that this provision of the rule, if effective, will reduce the number of CMPs imposed for repeat program violations, the consequent reduction in penalty income should not be counted as an economic loss to the program. To the extent that CMP income is viewed as vendor compensation for program violations, it simply offsets harm done to the program and WIC participants. The primary purpose of the CMP system, however, is to increase vendor compliance with program rules. The reduction in CMP assessments is just another way to measure the benefit of increased vendor compliance and improved program performance.

3. Authorized Infant Formula Suppliers

The benefit of this provision cannot be quantified. FNS does not believe that stolen, expired, improperly stored, or otherwise defective formula reaches WIC participants in significant quantities. Nevertheless, the rule establishes a system that further safeguards the supply of program formula. The administrative costs of this safeguard, as estimated above, are minimal. The benefits, in terms of public confidence in the program and a reduction in an already small health risk to WIC infants, are believed to outweigh these small administrative costs.

4. CMP Inflation

Civil Money Penalties collected from WIC vendors are recorded in WIC accounts as ''program income'' which can be used by the States for food or administrative expenses. FNS collects some data on sanctions imposed on WIC vendors for program violations. However, the data are not detailed or complete enough to estimate the effect of the rule's CMP inflation provision on WIC program income. The WIC program's TIP (''The Integrity Profile'') system tracks the number, but not the value, of sanctions imposed on WIC vendors for ''serious'' program violations. Serious violations are those for which sanctions may be imposed under WIC regulations. The TIP data do not track less serious State agency-established violations.

The rule's CMP inflation provision does not have any effect on sanctions

[9] This is taken from the discussion of costs on p. 5. This number is, of course, a very rough estimate of the number of above-50-percent vendors that offer incentive items today. The number who offered incentive items prior to the 2004 Reauthorization was likely higher than the number who offer them today.

[10] FNS estimate, 2006.

[11] The TIP data on WIC participants served by WIC-only vendors in 2004 suggests that this assumption understates the dollar estimate developed here.

[12] Annual WIC program participation, FY 2007. FNS program data.

[13] National Survey of WIC Participants, 2001. WIC Economic Unit Composition by Category, Mean WIC participants in unit = 1.81.

[14] The 2004 Senate report suggests that this too is a conservative estimate.

[15] 104,664 incentive item recipients × $2.00.

[16] Another factor that complicates an estimate of the value of this provision of the rule, is the effect of the Vendor Cost Containment rule. That rule was also mandated by the Child Nutrition and WIC Reauthorization Act of 2004. The rule requires State agencies to implement a vendor peer group system, competitive price criteria, and allowable reimbursement levels with the goal of ensuring that the WIC Program pays authorized vendors competitive prices for supplemental foods. It specifically requires State agencies to ensure that above-50-percent vendors do not charge the program more for WIC foods than other authorized vendors do. The Vendor Cost Containment rule's competitive price requirements indirectly limit the ability of above-50-percent vendors to pass the cost of incentive items on to the WIC program. The incremental economic benefit of the incentive item provisions of the WIC Discretionary Vendor rule is less than what it would have been in the absence of the Vendor Cost Containment rule.

[17] These include trafficking (exchanging WIC food instruments for cash), exchange of food instruments for firearms or other controlled substances, and exchange of food instruments for alcohol or tobacco. *See* § 246.12(l)(1).

[18] FNS has not attempted to measure the effect of the rule's vendor notification provision on the value of subsequent vendor overcharges. If effective, the rule will reduce the number of vendor overcharges following an initial occurrence identified by a State WIC agency (through a compliance buy or other means). Under prior rules, the State agency was not required to notify the vendor of that initial occurrence. However, the imposition of a CMP following a second occurrence (after a follow-up compliance buy) would presumably have been as effective at ending subsequent vendor violations as a written notice following an initial violation. A primary benefit of the notification rule, then, is that it should free State agency resources to allow compliance buys at more vendors in a given amount of time.

imposed for WIC food instrument trafficking, or exchange of food instruments for firearms, explosives, or other controlled substances. Those violations are covered by the FCPIAA, and the maximum penalties that may be imposed for those violations are already adjusted for inflation.

Note also that the rule has no effect on sanctions that fall short of WIC's $10,000 maximum CMP amount per violation. The rule does not change the way that sanctions are computed. CMP amounts imposed in lieu of disqualification are still computed as ten percent of the vendor's average monthly WIC redemptions multiplied by the number of months that the vendor could have been disqualified under program rules for the same violation.[19] The inflation adjustment provision of the rule only has effect on penalties, computed under the formula described here, that hit the current $10,000 ceiling per violation (or $40,000 ceiling per investigation).

The TIP system reports 956 serious vendor violations (other than trafficking or exchange of food instruments for controlled substances) for FY 2007.[20] The States imposed 94 CMPs for those violations. If, in the extreme, one assumes that all of these violations were imposed at the $10,000 maximum allowed under current rules, then the total value of penalties imposed would have been $940,000.[21] This rule would raise the maximum CMP from $10,000 to $11,000, and subject the new maximum to future inflation adjustments. Thus, the rule would have immediately raised the value of these penalties by $94,000. Future inflation adjustments would increase the value of penalties imposed by a much smaller amount.

The actual effect of the rule on the value of CMPs imposed cannot be estimated. The $94,000 figure developed above is probably a very high-end estimate of the first year effect of the rule's CMP provision.

Cost Benefit Summary:

The costs of the rule, summarized in table 3, are estimated with some confidence. Each of the administrative burden estimates contained in the proposed rule were subject to public comment. FNS refined several of its final administrative burden estimates in response to suggestions that the proposed rule's estimates were too low. Even with these revisions, the administrative cost of the rule remains very small. FNS estimates that the total costs of implementation and ongoing administration to State WIC agencies is just $750,000 over five years.

FNS has not developed a dollar benefit of the rule. Nevertheless, FNS is confident that the dollar benefit of the rule exceeds the rule's modest costs. A very conservative estimate of the benefit of the rule's incentive item provision alone exceeds the estimated cost of the entire rule. The vendor notification provision is expected to generate additional dollar savings by quickly correcting inadvertent vendor mistakes (including mistaken overcharges) once a first incident is identified by the States. The notification provision also offers honest WIC vendors the opportunity to amend their procedures and avoid costly sanctions. The rule also strengthens safeguards designed to prevent the distribution of stolen, expired, contaminated, or otherwise defective infant formula to WIC participants. The infant formula provisions of the rule benefit participants by reducing an already small health risk. Finally, the rule's CMP provisions restore uniformity to the maximum dollar penalties imposed for serious vendor violations. This will simplify program administration and restore fairness to the penalty structure.

Alternatives:

The basic parameters of the incentive item, vendor notification, and infant formula supplier provisions are mandated by statute. Significant alternatives to these provisions of the rule could not be considered. However, commenters on the proposed rule raised some issues that were considered by FNS as alternatives to the final rule. A few of the comments that proposed significant alternatives are discussed below.

1. *State agency discretion in giving notice to vendors of initial program violations.*

FNS received several comments on the proposed rule's provision to allow State agencies the discretion to withhold notification of an initial vendor violation. Some commenters objected to the rule's failure to specify criteria or standards to be followed by State agencies in determining whether an initial notification would compromise a broader investigation into vendor misconduct. FNS did not alter the final rule in response to these commenters' concerns. Instead, FNS believes that the provision, as proposed, follows the intent of Congress, as expressed by the House Committee on Education and the Workforce.[22] The Committee encouraged the USDA to draft regulations and guidance that gives State agencies the discretion to withhold notice of initial violations from vendors that would compromise a State investigation into suspected vendor fraud.

For similar reasons, FNS declined to change the proposed rule to require administrative review of State agency decisions to withhold notification of an initial vendor violation. Administrative review of all such State agency decisions would deny the States the discretion that Congress intended them to have. As noted above, the standard specified by the rule (and recommended by Congress) to justify a State decision to withhold notification is simply suspicion of fraud. State agency suspicion, even carefully considered suspicion, does not lend itself to administrative review.

2. *Requirement that State agencies determine whether to withhold or provide notice of initial vendor violations on a case by case basis.*

Some commenters urged FNS to allow States to establish categorical rules on vendor notification of initial program violations. The commenters suggested that some types of violations are sufficiently serious to justify a State rule against initial vendor notification. FNS considered this suggestion, but did not change the rule's requirement that States consider each violation individually. The proposed and final rules both require State agencies to suspect fraud before deciding to withhold notification. The purpose of withholding notification is to permit further investigation into the nature and extent of the fraudulent behavior. The seriousness of a vendor violation is not an indication of vendor intent. For that reason, States should not be permitted to establish categorical rules on notification based on the seriousness of a violation alone. Such rules might have the unintended consequence of preventing States from immediately notifying vendors who inadvertently commit a serious violation. No purpose is served by disallowing immediate notification of violations that do not merit further investigation.

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[19] § 246.12(l)(x).

[20] TIP report, ''Store Tracking and Redemption System—Sanctions Resulting From Serious Program Violations'', FY 2007 total, run date May 1, 2008. This is a count of vendor violations identified by State WIC agencies. Because some vendors committed more than one of these 956 violations, the total number of vendors that were found to have committed a violation is less than 956.

[21] This assumes that none of the less serious State agency-established penalties, which are not tracked by TIP, would have been imposed at the $10,000 CMP maximum.

[22] Report No. 108–445, March 23, 2004.

Federal Register

Tuesday,
January 6, 2009

Part IV

Nuclear Regulatory Commission

Privacy Act of 1974; Republication of Systems of Records Notices; Notice

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Republication of Systems of Records Notices

AGENCY: Nuclear Regulatory Commission.

ACTION: Republication of Systems of Records Notices.

SUMMARY: The Nuclear Regulatory Commission (NRC) has conducted a comprehensive review of all its Privacy Act systems of records. The NRC is revising and republishing all its systems of records notices as a result of this review. The revisions are minor corrective and administrative changes that do not meet the threshold criteria established by the Office of Management and Budget (OMB) for either a new or altered system of records.

DATES: *Effective Date:* All revisions included in this republication are complete and accurate as of December 18, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra S. Northern, Privacy Act Program Analyst, FOIA/Privacy Act Section, Records and FOIA/Privacy Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6879; *e-mail: Sandra.Northern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Republication of NRC's Revised Systems of Records Notices

With the exception of one new system of records and one new general routine use, these notices were last published in the **Federal Register** on October 10, 2006 (71 FR 59614). The new system of records was NRC–45, Digital Certificates for Personal Identity Verification Records, published in the **Federal Register** on December 22, 2006 (71 FR 77072), and became effective on January 31, 2007. The new general routine use applies to all of NRC's systems of records allowing disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there has been a breach of data contained in the systems. This new routine use was published in the **Federal Register** on August 3, 2007 (72 FR 43297), and became effective on September 12, 2007. One system of records, NRC–13, Incentive Awards Files, has been revoked.

NUCLEAR REGULATORY COMMISSION PRIVACY ACT SYSTEMS OF RECORDS

NRC Systems of Records

1. Parking Permit Records—NRC.
2. Biographical Information Records—NRC.
3. Enforcement Actions Against Individuals—NRC.
4. Conflict of Interest Files—NRC.
5. Contracts Records Files—NRC.
6. Department of Labor (DOL) Discrimination Cases—NRC.
7. Call Detail Records—NRC.
8. Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC.
9. Office of Small Business and Civil Rights Discrimination Complaint Files—NRC.
10. Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.
11. General Personnel Records (Official Personnel Folder and Related Records)—NRC.
12. Child Care Subsidy Program Records—NRC.
13. (Revoked.)
14. Employee Assistance Program Files—NRC.
15. (Revoked.)
16. Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.
17. Office of Workers' Compensation Program Records—NRC.
18. Office of the Inspector General (OIG) Investigative Records—NRC.
19. Official Personnel Training Records—NRC.
20. Official Travel Records—NRC.
21. Payroll Accounting Records—NRC.
22. Personnel Performance Appraisals—NRC.
23. Office of Investigations Indices, Files, and Associated Records—NRC.
24. Property and Supply Records—NRC.
25. Oral History Program—NRC.
26. Transit Subsidy Benefits Program Records—NRC.
27. Radiation Exposure Information and Reporting System (REIRS) Files—NRC.
28. Merit Selection Records—NRC.
29. (Revoked.)
30. (Revoked.)
31. (Revoked.)
32. Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.
33. Special Inquiry File—NRC.
34. (Revoked.)
35. Drug Testing Program Records—NRC.
36. Employee Locator Records—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Access Control Records—NRC.
41. Tort Claims and Personal Property Claims Records—NRC.
42. Strategic Workforce Planning Records—NRC.
43. Employee Health Center Records—NRC.
44. Employee Fitness Center Records—NRC.
45. Digital Certificates for Personal Identity Verification Records—NRC.

These systems of records are those systems maintained by the NRC that contain personal information about individuals from which information is retrieved by an individual's name or identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, ensure that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

Prefatory Statement of General Routine Uses

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement of General Routine Uses.

1. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract or issuing a security clearance, license, grant or other benefit.

3. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit.

4. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations.

5. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

7. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the NRC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the NRC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the NRC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NRC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

NRC–1

SYSTEM NAME:

Parking Permit Records—NRC.

SYSTEM LOCATION:

Administrative Services Center, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and contractors who apply for parking permits for NRC-controlled parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of the applications and the revenue collected for the Headquarters' parking facilities. The applications include, but are not limited to, the applicant's name, address, telephone number, length of service, vehicle, rideshare, and handicap information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511; 41 CFR 102–74.265 *et seq.*, Parking Facilities; Management Directive 13.4, ''Transportation Management,'' Part I, ''White Flint North Parking Procedures''.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To record amount paid and revenue collected for parking;

b. To contact permit holder;

c. To determine priority for issuance of permits;

d. To provide statistical reports to city, county, State, and Federal Government agencies; and

e. For the routine uses specified in paragraph numbers 1, 4, 5, 6, and 7 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are on paper in file folders and on computer media.

RETRIEVABILITY:

Accessed by name, tag number, and permit number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Administrative Services Center staff. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records is limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–2

SYSTEM NAME:

Biographical Information Records—NRC.

SYSTEM LOCATION:

Office of Public Affairs, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners and senior NRC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, and other general biographical data about the Commissioners and senior NRC staff members, including photographs of Commissioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5841, 5843(a), 5844(a), 5845(a), and 5849.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information to the press;

b. To provide information to other persons and agencies requesting this information; and

c. For the routine uses specified in paragraph numbers 5, 6, and 7 of the Prefatory Statement of General Routine Uses. Biographies of current Commissioners are available on the NRC's Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets. Access to and use of this information is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by each individual and approved for use by the individual involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–3

SYSTEM NAME:

Enforcement Actions Against Individuals—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC Regional Offices at the locations listed in Addendum I, Part 2, and in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in NRC-licensed activities who have been subject to NRC enforcement actions or who have been the subject of correspondence indicating that they are being, or have been, considered for enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes, but is not limited to, individual enforcement actions, including Orders, Notices of Violations with and without Civil Penalties, Orders Imposing Civil Penalties, Letters of Reprimand, Demands for Information, and letters to individuals who are being or have been considered for enforcement action. Also included are responses to these actions and letters. In addition, the files may contain other relevant documents directly related to those actions and letters that have been issued. Files are arranged numerically by Individual Action (IA) numbers, which are assigned when individual enforcement actions are considered. In instances where only letters are issued, these letters also receive IA numbers. The system includes a computerized database from which information is retrieved by names of the individuals subject to the action and IA numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073(e), 2113, 2114, 2167, 2168, 2201(i), 2231, 2282; 10 CFR 30.10, 40.10, 50.5, 50.110, 50.111, 50.120, 60.11, 61.9b, 70.10, 72.12, 110.7b, 110.50, and 110.53 (2008); 10 CFR Part 2, subpart B.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To respond to general information requests from the Congress;

b. To deter future violations, certain information in this system of records may be routinely disseminated to the public by means such as: publishing in the **Federal Register** certain enforcement actions issued to individuals and making the information available in the Public Electronic Reading Room accessible through the NRC Web site, *http://www.nrc.gov*.

c. When considered appropriate for disciplinary purposes, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a bar association, or other professional organization performing similar functions, including certification of

individuals licensed by NRC or Agreement States to perform specified licensing activities;

d. Where appropriate to ensure the public health and safety, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a Federal or State agency with licensing jurisdiction;

e. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

f. For all of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Records are accessed by individual action file number or by the name of the individual.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets and are under visual control during duty hours. Access to computer records requires use of proper password and user identification codes. Access to and use of these records is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in the records is primarily obtained from NRC inspectors and investigators and other NRC employees, individuals to whom a record pertains, authorized representatives for these individuals, and NRC licensees, vendors, other individuals regulated by the NRC, and persons making allegations to the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–4

SYSTEM NAME:

Conflict of Interest Files—NRC.

SYSTEM LOCATION:

Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC current and former employees, consultants, Special Government employees, and advisory committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to:

a. General biographical data (*i.e.* , name, birth date, home address, position title, home and business telephone numbers, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (*i.e.* , nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, and pension or other retirement interests);

c. Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Advice and determinations (*i.e.*, no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (*i.e.*, proposed period of NRC service, estimated number of days of NRC employment during period of service, proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of Government-owned property to be in possession of appointee).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 2634–2641, 5801; 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978, as amended); 18 U.S.C. 201–209; 31 U.S.C. 1353; Executive Order (E.O.) 12674 (as modified by E.O. 12731).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide the Department of Justice, Office of Personnel Management, Office of Government Ethics, Office of Special Counsel, and/or Merit Systems Protection Board with information concerning an employee in instances where this office has reason to believe a Federal law may have been violated or where this office desires the advice of the Department, Office, or Board concerning potential violations of Federal law; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets and in access restricted

computer media. Access to these records is limited to individuals with a need-to-know.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, or is derived from information he or she supplied, or comes from the office to which the individual is to be assigned, other NRC offices, or other persons such as attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–5

SYSTEM NAME:

Contracts Records Files—NRC.

SYSTEM LOCATION:

Primary system—Division of Contracts, Office of Administration, NRC, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the locations listed in Addendum I, Parts 1 and 2, in working files maintained by the assigned office project manager and in the NRC's Agencywide Documents Access and Management System (ADAMS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employed as NRC contractors. NRC employees substantially involved with contracting, such as project officers and other acquisition officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records. They also contain evaluations, recommendations, and reports of NRC acquisition officials, assessment of contractor performance, invoice payment records, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3301; 31 U.S.C. 3511; 48 CFR Subpart 4.8; NRC Management Directive 3.53, Records Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information to the Federal Procurement Data Center, Department of Health and Human Services, Defense Contract Audit Agency, General Accounting Office, and other Federal agencies for audits and reviews; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Paper records are accessed by contract number or purchase order number; and are cross-referenced to the automated system that contains the name of the contractor, vendor, project officer, procurement official, contractor manager and taxpayer identification number (TIN).

SAFEGUARDS:

File folders are maintained in unlocked conserver files in a key code locked room. Access to and use of these records is limited to those persons whose official duties require such access. Access to automated systems is protected by password and roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor or NRC employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–6

SYSTEM NAME:

Department of Labor (DOL) Discrimination Cases—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and in enforcement coordinators' offices at NRC Regional Offices at the addresses listed on Addendum I, Part 2. The duplicate systems in the Regional Offices would ordinarily be limited to the cases filed in each Region.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints with DOL concerning alleged acts of discrimination in violation of section 211 of the Energy Reorganization Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files arranged alphabetically by name to track complaints filed by individuals with DOL under section 211 of the Energy Reorganization Act. These files include documents related to, and provided by, the DOL including copies of complaints, correspondence between the parties, and decisions by the Regional Administrators of DOL's Occupational, Safety, and Health Administration, Administrative Law Judges, and the Administrative Review Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201, as amended; 42 U.S.C. 2282, as amended; 42 U.S.C. 5851, as amended; 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

Any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders.

RETRIEVABILITY:

Records are accessed by the name of the individual who has filed a complaint with DOL.

SAFEGUARDS:

Paper records are maintained in locking file cabinets. Access to and use of these records is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information received from the DOL is treated by DOL as public information and subject to disclosure under applicable laws.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individuals to whom a record pertains, attorneys for these individuals, union representatives serving as advisors to these individuals, NRC licensees, NRC staff, and DOL.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–7

SYSTEM NAME:

Call Detail Records—NRC.

SYSTEM LOCATION:

Office of Information Services, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, MD, and NRC's Regional offices I–IV listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals utilizing NRC telecommunication services, including the recipients of long distance and cellular calls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records of calls originating from or otherwise billed to NRC including, but not limited to, originating and destination telephone numbers, cities, States, date, time, cost, duration, and agency billing hierarchy code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 *et seq.,* 3301; 41 CFR 101–35.1; 41 CFR 101, Subchapter B; NRC Management Directive 3.53, Records Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To determine an individual's responsibility for telephone calls;

b. To assist in the planning and effective management of NRC telecommunication services, and to determine that those services are being used in an efficient and economical manner;

c. To verify invoices for telecommunication services; and

d. For the routine uses specified in paragraphs 1, 3, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information will be maintained in paper files and on computer media.

RETRIEVABILITY:

Accessed by telephone number, organizational code, or billing date.

SAFEGUARDS:

Maintained in locking file cabinets or locked rooms. Computer files are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Infrastructure and Computer Operations Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Regional Offices I–IV: The appropriate Director, Division of Resource Management and Administration, at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Call detail data from telecommunications service providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–8

SYSTEM NAME:

Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Human Resources, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

The Office of the Inspector General (OIG) employee files located with the OIG at NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system may be maintained, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and at NRC's Regional Offices at locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment, current and former NRC employees, and annuitants who have filed written complaints brought to the Office of Human Resource's attention or initiated grievances or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management, and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to: disciplinary actions; adverse actions; appeals; complaints; grievances; arbitrations; and negative determinations regarding within-grade salary increases. It contains information relating to determinations affecting individuals made by the NRC, Office of Personnel Management, Merit Systems Protection Board, arbitrators or courts of law. The records may include the initial appeal or complaint, letters or notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3132(a), 5 U.S.C. 3591, 5 U.S.C. 4303, as amended, 5 U.S.C. 7503; 42 U.S.C. 2201(d), as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board under applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and computer media.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are maintained in locked file cabinets and in a password-protected automated system. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as

in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee/Labor Relations and Work Life Services Branch, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; Official Personnel Folder; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–9

SYSTEM NAME:

Office of Small Business and Civil Rights Discrimination Complaint Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Small Business and Civil Rights, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system exists, in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment and current and former NRC employees who have initiated EEO counseling and/or filed a formal complaint of employment discrimination under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, and the Rehabilitation Act. Individuals in the United States in education programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of sex discrimination under Title IX of the Education Amendments Act. Individuals in the United States in programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of discrimination under Title VI of the Civil Rights Act, the Age Discrimination in Employment Act of 1975, section 504 of the Rehabilitation Act of 1973, and Title IV of the Energy Reorganization Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records may contain copies of written reports by counselors; investigative files; administrative files, including documentation of withdrawn and/or dismissed complaints; complainant's name, title, and grade; types and theories of discrimination alleged; description of action and conditions giving rise to complaints, settlement agreements, and compliance documents; description of corrective and/or remedial actions; description of disciplinary actions, if any; request for hearings, procedural information, and hearing transcripts; procedural information and forms regarding Alternative Dispute Resolution (ADR); Equal Employment Opportunity Commission (EEOC), Merit System Protection Board (MSPB), Department of Education (ED), and Department of Justice (DOJ) findings, analyses, decisions and orders; final agency decisions and final actions; and notices of intent to file in Federal district court, notices of cases filed in Federal district court, and Federal court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2301; 5 U.S.C. 2302; 29 U.S.C. 206(d), as amended; 29 U.S.C. 633a, as amended; 29 U.S.C. 791 et seq.; 42 U.S.C. 1981; 42 U.S.C. 2000e–16, as amended; 42 U.S.C. 5891; Executive Order (E.O.) 11246; E.O. 11375, as amended by E.O. 11478; E.O. 12086, as amended by E.O. 12608; E.O. 12106; E.O. 13166; 10 CFR Part 4; 10 CFR Part 5; 29 CFR Part 1614; and Public Law 107–174, Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To furnish information related to discrimination complaints to the EEOC, Office of Personnel Management (OPM), MSPB, DOJ, ED, Health and Human Services, Office of Management and Budget, and Congress, under applicable requirements; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and computer media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Automated system is password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at

http://www.nrc.gov/reading-rm/records-mgmt/disposition.html. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Civil Rights Program Manager, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, counselors, mediators, investigators, NRC staff, Office of Human Resources, the EEOC, OPM, MSPB, DOJ and/or ED officials, affidavits or statements from complainants, testimony of witnesses, and official documents relating to the complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

NRC–10

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.

SYSTEM LOCATION:

Primary system—FOIA/Privacy Section, Records and FOIA/Privacy Services Branch, Information and Records Services Division, Office of Information Services, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made FOIA or PA requests for NRC records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the written requests from individuals or organizations made under the FOIA or PA, the NRC response letters, and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a; 42 U.S.C. 2201, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of reports required by 5 U.S.C. 552 and 5 U.S.C. 552a;

c. To another Federal agency when consultation or referral is required to process a request; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses. Some of the FOIA records are made publicly available in the Public Electronic Reading Room accessible through the NRC Web site, *http://www.nrc.gov.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, audio and video tapes, and computer media.

RETRIEVABILITY:

Records are accessed by unique assigned number for each request and by requester's name.

SAFEGUARDS:

Records are maintained in locked file cabinets that are kept in locked rooms. Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA/PA Officer, FOIA/Privacy Section, Records and FOIA/Privacy Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the FOIA/PA Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Requests are made by individuals. The response to the request is based upon information contained in NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records)—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters and all Senior Executive Service (SES) personnel, Office of Human Resources, NRC, One and Two White Flint North, 11555 and 11545 Rockville Pike, Rockville, Maryland, and Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2. NRC has an interagency agreement with the U.S. Department of the Interior (DOI),

National Business Center (NBC), Denver, Colorado, to maintain electronic personnel and payroll information for its employees as of November 2, 2003.

Duplicate system—Duplicate systems exist, in part, within the organization where an employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains personnel records that document an individual's Federal career and includes notification of personnel action (SF–50) and documents supporting the action taken; life insurance, thrift savings plan, health benefits and related beneficiary forms; letters of disciplinary action; notices of reductions-in-force; and other records retained in accordance with the Office of Personnel Management's Guide to Personnel Recordkeeping. These records include employment information such as personal qualification statements, resumes, and related documents including information about an individual's birth date, social security number, veterans preference status, tenure, minority group designator, physical handicaps, past and present salaries, grades, position titles; employee locator information identifying home and work address, phone numbers and emergency contacts; and certain medical records related to initial appointment and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501–4509, 4511–4513, 5336, and 7901; 42 U.S.C. 290dd–2; 42 U.S.C. 2201(d); and Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/NBC in order to affect the maintenance of electronic personnel records on behalf of the NRC related to its employees.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To the Office of Personnel Management (OPM) and/or Merit Systems Protection Board (MSPB) for making a decision when an NRC employee or former NRC employee questions the validity of a specific document in an individual's record;

b. To a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

c. To store all personnel actions and related documentation, OPM investigations, Office of the Inspector General investigations, security investigations, determine eligibility for Federal benefits, employment verification, and to update monthly Enterprise Human Resources Integration data repository;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the OPM and/or MSPB for review, audit, or reporting purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. For medical records, to provide information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workers' Compensation Programs) and the OPM; and

h. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media. Beginning November 2, 2003, electronic records are maintained in the DOI Federal Personnel/Payroll System (FPPS). Electronic records prior to November 2, 2003, are maintained at NRC in the Human Resources Management System (HRMS).

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Official Personnel Folders (OPF) are maintained in locking cabinets in a locked room and related documents may be maintained in unlocked file cabinets or an electromechanical file organizer. Automated systems are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters and all NRC SES employees—Associate Director for Human Resources Operations and Policy, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Region I–IV non-SES employees—The appropriate Human Resources Team Leader at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; or is provided by agency officials, other Federal agencies, universities, other academic institutions, or persons, including references, private and Federal physicians, and medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–12

SYSTEM NAME:

Child Care Subsidy Program Records—NRC.

SYSTEM LOCATION:

Federal Employee Education and Assistance Fund (FEEA), 3333 S. Wadsworth Boulevard, Suite 300, Lakewood, Colorado (or current contractor facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who voluntarily apply for child care subsidy.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include application forms for child care subsidy containing personal information about the employee (parent), their spouse (if applicable), their child/children, and their child care provider, including name, social security number, employer, grade, home and work telephone numbers, home and work addresses, total family income, name of child on whose behalf the parent is applying for subsidy, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, child care cost, and provider tax identification number; and copies of IRS Form 1040 or 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 590g; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the Office of Personnel Management to provide statistical reports; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained on paper forms and on computers at the current contractor site.

RETRIEVABILITY:

Information may be retrieved by employee name or social security number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets and computer records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from NRC employees who apply for child care subsidy and their child care provider. Furnishing the information is voluntary.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–13 (Revoked.)
NRC–14

SYSTEM NAME:

Employee Assistance Program Files—NRC.

SYSTEM LOCATION:

Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and current contractor facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees or family members who have been counseled by or referred to the Employee Assistance Program (EAP) for problems relating to alcoholism, drug abuse, job stress, chronic illness, family or relationship concerns, and emotional and other similar issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees or their families who have participated in the EAP and the results of any counseling or referrals which may have taken place. The records may contain information as to the nature of each individual's problem, subsequent treatment, and progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101 *et seq.*; 42 U.S.C. 290dd–1 and 290dd–2; 44 U.S.C. 3101; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For statistical reporting purposes; and

b. Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–2, as amended.

c. For the routine use specified in paragraph number 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Information accessed by the EAP identification number and name of the individual.

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance and Wellness Services Manager and the current EAP contractor. Case files are maintained in accordance with the confidentiality requirements of Public Law 93–282, any NRC-specific confidentiality regulations, and the Privacy Act of 1974.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance and Wellness Services, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information compiled by the Manager, Employee Assistance and Wellness Services, and the Employee Assistance Program contractor during the course of counseling with an NRC employee or members of the employee's family.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–15 (Revoked.)

NRC–16

SYSTEM NAME:

Facility Operator Licensees Record Files (10 CFR part 55)—NRC.

SYSTEM LOCATION:

For power reactors, at the appropriate Regional Office at the address listed in Addendum I, Part 2; for non-power (test and research) reactor facilities, at the Operator Licensing and Human Performance Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The Operator Licensing Tracking System (OLTS) is located at NRC Headquarters and is accessible by the four Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed under 10 CFR part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to 10 CFR part 55 applicants for a license, licensed operators, and individuals who previously held licenses. This includes applications for a license, license and denial letters, and related correspondence; correspondence relating to actions taken against a licensee; 10 CFR 50.74 notifications; certification of medical examination and related medical information; fitness for duty information; examination results and other docket information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2137 and 2201(i).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To determine if the individual meets the requirements of 10 CFR part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for reports and statistical evaluations related to selection, training, and examination of facility operators;

c. To provide examination, testing material, and results to facility management; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and logs, and computer media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Maintained in locked file cabinets or an area that is locked. Computer files are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operator Licensing and Human Performance Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and

Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the Part 50 licensee, a licensed physician, members of the Operator Licensing and Human Performance Branch or regional operator licensing branches, and other NRC and contractor personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–17

SYSTEM NAME:

Office of Workers' Compensation Program Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Office of Human Resources, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees who report an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the location and description of the injury or illness, treatment, and disposition as well as copies of Office of Workers' Compensation Program claim forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, as amended; 29 U.S.C. 657(c), as amended; Executive Order (E.O.) 12196 as amended by E.O. 12223 and E.O. 12608; E.O. 12258; E.O. 12399; E.O. 12489; E.O. 12534; E.O. 12610; E.O. 12692.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor;

b. For transmittal to the Secretary of Labor or an authorized representative under duly promulgated regulations;

c. For transmittal to the Office of Personnel Management, Merit Systems Protection Board, and/or Equal Employment Opportunity Commission as required to support individual claims; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper and computer media.

RETRIEVABILITY:

Records retrieved by employee name or assigned claim number.

SAFEGUARDS:

Paper records are locked file cabinets under the visual control of the responsible staff. Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters—Associate Director for Human Resources Operations and Policy, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Region I–IV—The appropriate Human Resources Team Leader at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC Health Unit; NRC Headquarters and Regional Office reports; and forms with original information largely supplied by the employees or their representative, supervisors, witnesses, medical personnel, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–18

SYSTEM NAME:

Office of the Inspector General (OIG) Investigative Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises five parts: (1) An automated Investigative Database Program containing reports of investigations, inquiries, and other reports closed since 1989; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations, inquiries, and other reports; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; (4) an automated Allegations Tracking System that includes allegations referred to the OIG between 1985 and 2005, whether or not the allegation progressed to an

investigation, inquiry, or other report, and dates that the investigation, inquiry, or other report, was opened and closed; and (5) an automated Investigative Management System that includes allegations referred to the OIG from 2005, whether or not the allegation progressed to an investigation, inquiry or other report, and dates that an investigation, inquiry or other report was opened and closed and reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data and work papers pertaining to these cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; 42 U.S.C. 2035(c), 2201(c), and 5841(f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature.

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

c. To a court, adjudicative body before which NRC is authorized to appear, Federal agency, individual or entity designated by NRC or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC, or any component of NRC;

2. Any employee of NRC where the NRC or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC determines that the litigation is likely to affect the NRC or any of its components.

d. To a private firm or other entity that OIG or NRC contemplates it will contract or has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records, to include to contractors or entities who have a need for such information or records to resolve or support payment to the agency. The contractor, private firm, or entity needing access to the records to perform the activity shall maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall comply with the Privacy Act.

e. To another agency to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in paper files, and in various computer media.

RETRIEVABILITY:

Information is retrieved from the Investigative Database Program by the name of an individual, by case number, or by subject matter. Information in the paper files backing up the Investigative Database Program and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in both the Allegations Tracking System and the Investigative Management System is retrieved by allegation number, case number, or name.

SAFEGUARDS:

Access to the automated Investigative Database Program is password protected. Index card files for older cases (1970–1989) are maintained in secure office facilities. Both the Allegations Tracking System and the Investigative Management System are accessible from terminals that are double-password-protected. Paper files backing up the automated systems and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, etc., are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. All records in this system are available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear

Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Inspector General Act, 5 U.S.C. App. 3, and the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–19

SYSTEM NAME:

Official Personnel Training Records Files—NRC.

SYSTEM LOCATION:

Primary system located at the NRC's current contractor facility on behalf of the Office of Human Resources, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

The Office of the Inspector General (OIG) employee files located with the OIG at NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the Technical Training Center, Regional Offices, and within the organization where the NRC employee works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied, or were selected for NRC, other Government, or non-Government training courses or programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's educational background and training courses including training requests and authorizations, evaluations, supporting documentation, and other related personnel information, including but not limited to, an individual's name, address, social security number, telephone number, position title, organization, and grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103; Executive Order (E.O.) 9397; E.O. 11348, as amended by E.O. 12107.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. Extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local government agencies; educational institutions and training facilities for purposes of enrollment and verification of employee attendance and performance; and

b. Disclosed for the routine uses specified in paragraph numbers 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on computer media.

RETRIEVABILITY:

Information is accessed by name, user identification number, course number, or course session number.

SAFEGUARDS:

Electronic records are maintained in a password protected computer system. Paper is maintained in lockable file cabinets and file rooms. Access to and use of these records is limited to those persons whose official duties require such access, with the level of access controlled by roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Development, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the subject individual, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

SYSTEM LOCATION:

Primary system— Division of Financial Services, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's National Business Center (DOI/NBC) in Denver, Colorado, to

cross-service the travel voucher reimbursements as of January 2, 2008.

Duplicate system—Duplicate systems may exist, in part, within the organization where an employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former NRC employees; consultants; and invitational travelers.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain requests and authorizations for official travel, travel vouchers, passports, and related documentation; charge card applications, terms and conditions for use of charge cards, charge card training documentation, monthly reports regarding accounts, credit data, and related documentation; all of which may include, but are not limited to, an individual's name, address, social security number, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701, 5707; 31 U.S.C. 716, 1104, 1108, 3511, 3512, 3701, 3711, 3717, 3718, 3726; 41 CFR 102–118; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with the interagency agreement, NRC may disclose records to DOI/NBC to cross-service travel voucher reimbursements on behalf of the NRC. Specifically, DOI/NBC will examine and pay travel vouchers and maintain the official agency record.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To the U.S. Treasury for payment;

b. To the Department of State or an embassy for passports or visas;

c. To the General Services Administration and the Office of Management and Budget for required periodic reporting;

d. To the charge card issuing bank;

e. To the Department of Interior, National Business Center, for collecting severe travel card delinquencies by employee salary offset;

f. To a consumer reporting agency to obtain credit reports; and

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency, other than to obtain credit reports, are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on computer media, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in key locked file cabinets and in conserver files in a passcode locked room. Passports and visas are maintained in a locked file cabinet. For electronic records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel Services Team, Division of Financial Services, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR Part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the individual, NRC Agency staff, NRC contractors, the charge card issuing bank, the consumer reporting agency, and outside transportation agents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–21

SYSTEM NAME:

Payroll Accounting Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Financial Services, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's National Business Center (DOI/NBC), Federal Personnel/Payroll System (FPPS), in Denver, Colorado, to maintain electronic personnel information and perform payroll processing activities for its employees as of November 2, 2003.

Duplicate system—Duplicate systems exist, in part, within the organization where the employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, including special Government employees (i.e., consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, benefit enrollment and voluntary allowance deductions, and labor activities, which includes, but is not limited to, an individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 CFR 31.6011(b)(2), 31.6109–1; 110 Stat 2105; 5 U.S.C. 6334; 5 U.S.C. Part

III, Subpart D, Ch. 55; 31 U.S.C. 716, 1104, 1105, 1108, 3325, 3511, 3512, 3701, 3711, 3717, 3718; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/NBC/FPPS in order to effect all financial transactions on behalf of the NRC related to employee pay. Specifically, the DOI/NBC's FPPS may effect employee pay or deposit funds on behalf of NRC employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and consultants and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes including the withholding and reporting of Thrift Savings Plan deductions to the Department of Agriculture's National Finance Center;

b. For reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities;

c. For FICA and Medicare deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers by the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for financial reporting;

i. For withholding and reporting of retirement, tax levies, bankruptcies, garnishments, court orders, re-employed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes;

k. For transmittal to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action;

l. For transmittal to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

m. For transmittal to the Office of Child Support Enforcement for release to the Department of Treasury for the purpose of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return;

n. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

o. Time and labor data are used by the NRC as a project management tool in various management records and reports (*i.e.*, work performed, work load projections, scheduling, project assignments, budget), and for identifying reimbursable and fee billable work performed by the NRC; and

p. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on computer media (stored in memory, on disk, and magnetic tape), on microfiche, and in paper copy.

Electronic payroll, time, and labor records prior to November 2, 2003, are maintained in the Human Resources Management System (HRMS), the PAY PERS Historical database reporting system, and on microfiche at NRC. Electronic payroll records from November 2, 2003, forward are maintained in the DOI/NBC's FPPS in Denver, Colorado. Time and labor records are maintained in the HRMS at NRC.

RETRIEVABILITY:

Information is accessed by employee identification number, name and social security number.

SAFEGUARDS:

Records are maintained in buildings where access is controlled by a security guard force. File folders, microfiche, tapes, and disks, including backup data, are maintained in secured locked rooms and file cabinets after working hours. All records are in areas where access is controlled by keycard and is limited to NRC and contractor personnel who need the information to perform their official duties. Access to computerized records requires use of proper passwords and user identification codes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Time, Labor and Payroll Services Team, Division of Financial Services, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the

procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from sources, including but not limited to, the individual to whom it pertains, the Office of Human Resources and other NRC officials, and other agencies and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

SYSTEM LOCATION:

Primary system—Part A: For Headquarters personnel, Office of Human Resources, NRC, 11545 and 11555 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2.

Part B: Office of Human Resources, NRC, 11555 Rockville Pike, Rockville, Maryland.

NRC has an interagency agreement with the U.S. Department of the Interior (DOI), National Business Center (NBC), in Denver, Colorado, to maintain electronic personnel and payroll information for its employees as of November 2, 2003.

The Office of the Inspector General (OIG) employee files located with the OIG at NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist in part, within the organization where the employee actually works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees other than the Commissioners, the Inspector General, and temporary personnel employed for less than 1 year.

Part A: Senior Level System employees, GG–1 through GG–15 employees, hourly wage employees, and administratively determined rate employees.

Part B: Senior Executive Service and equivalent employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains performance appraisals, which includes performance plans, summary ratings, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301, *et seq.;* 5 U.S.C. 4311 *et seq.;* 42 U.S.C. 2201(d), 5841; and 5 CFR part 293.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to DOI/NBC in order to affect the maintenance of electronic personnel records on behalf of the NRC related to its employees.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For agency personnel functions; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in folders and on computer media. Summary ratings from 11/2/2003 forward are stored in the DOI/NBC Federal Personnel/Payroll System (FPPS). Prior to 11/2/2003 they are maintained at the NRC in the Human Resources Management System (HRMS).

RETRIEVABILITY:

Records are accessed by name and/or social security number.

SAFEGUARDS:

Records are maintained in locking cabinets in a locked room and related documents may be maintained in unlocked file cabinets or an electromechanical file organizer. Automated systems are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Human Resources Operations and Policy, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employees: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Human Resources Team Leader at the appropriate Regional Office I–IV listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Part A: Subject employee and employee's supervisors.

Part B: Subject employee, employee's supervisors, and any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, One White Flint

North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Records exist within the NRC Regional Office locations, listed in Addendum I, Part 2, during an active investigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual investigations and matters of concern to the Office of Investigations and correspondence on matters directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 42 U.S.C. 2201(c), as amended by Public Law 109–58, and 42 U.S.C. 5841.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the persons or entities mentioned therein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record relating to an investigation or matter falling within the purview of the Office of Investigations may be disclosed as a routine use to the referring agency, group, organization, or individual.

c. A record relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to an investigation or matter may be disclosed as a routine use to a foreign country under an international treaty or agreement.

e. To a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to the agency.

f. A record may be disclosed for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained on paper, photographs, audio/video tapes, and computer media.

RETRIEVABILITY:

Information retrieved by document text and/or case number.

SAFEGUARDS:

Hard copy files maintained in approved security containers and locking filing cabinets. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information. The electronic management information system is operated within the NRC's secure LAN/WAN system. Access rights to the system only available to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations,'' and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from sources including, but not limited to, NRC officials, employees, and licensees; Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–24

SYSTEM NAME:

Property and Supply Records—NRC.

SYSTEM LOCATION:

Property and Labor Services Branch, Directorate for Space Planning and Consolidation, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, with designated property custodians at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who have custody of Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of NRC sensitive and non-sensitive equipment, which includes but is not limited to, acquisition and depreciated costs, date of acquisition, item description, manufacturer, model number, serial number, stock number, tag number, property custodians, name of individual to whom property is assigned, user id, office affiliation, office

location. Also included are furniture and supply records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, as amended by Public Law 109–148; and 40 U.S.C. 506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To maintain an inventory and accountability of Government property;

b. To provide information for clearances of employees who separate from the NRC;

c. To report excess agency property to GSA; and

d. For any of the routine uses specified in paragraph numbers 1, 3, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in automated system. Data entry paper records in file folders.

RETRIEVABILITY:

Accessed by NRC tag number, user id, organization, office location and stock number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Electronic records are password protected.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property and Labor Services Branch, Directorate for Space Planning and Consolidation, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system is provided by property custodians, contract specialists, and purchase card holders and/or other individuals buying equipment or supplies on behalf of the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–25

SYSTEM NAME:

Oral History Program—NRC.

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, former employees, and other individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of interviews on magnetic tape and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) and 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For incorporation in publications on the history of the nuclear regulatory program;

b. To provide information to historians and other researchers; and

c. For the routine use specified in paragraph number 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and transcripts.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained in locked file room. Access to and use of these records is limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian and his or her staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–26

SYSTEM NAME:

Transit Subsidy Benefits Program Records—NRC.

SYSTEM LOCATION:

Administrative Services Center, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, Social Security Number, and information regarding the employee's commuting schedule and mass transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 132, as amended by Public Law 108–311, sec. 207(13); 31 U.S.C. 3511; 41 CFR 102–74.210; 41 CFR 301–10.100; 41 CFR 301–10–190; 41 CFR 102–71.20; Executive Order (E.O.) 9397; E.O. 13150, Federal Workforce Transportation; Qualified Transportation Fringe Benefits, 26 CFR Parts 1 and 602; NRC Management Directive 3.4, ''Transportation Management.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide statistical reports to the city, county, State, and Federal Government agencies;

b. To provide the basis for program approval and issue monthly subsidies; and

c. For the routine uses specified in paragraph numbers 1, 4, 5, 6, and 7 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Accessed by name and scanned NRC badge. Access by Social Security Number when an individual's photo identification badge is scanned to record receipt of their transit subsidy.

SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Administrative Services Center. Computer files are maintained on a hard drive and accessible by user login. Access to and use of these records is limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–27

SYSTEM NAME:

Radiation Exposure Information and Reporting System (REIRS) Files—NRC.

SYSTEM LOCATION:

Primary system—Oak Ridge Associated Universities (ORAU), Oak Ridge, Tennessee (or current contractor facility).

Duplicate system—Duplicate systems exist, in part, regarding employee exposure records, with the NRC's Radiation Safety Officers at Regional office locations listed in Addendum 1, Part 2, in the Office of Nuclear Reactor Regulations (RES), the Office of Nuclear Material Safety and Safeguards (NMSS), and the Office of Federal and State Materials and Environmental Management Programs (FSME) at NRC Headquarters, Rockville, Maryland. The Office of Administration (ADM), One White Flint North, Rockville, Maryland, maintains the employee dosimeter tracking system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, place and period date of exposure; name and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and radionuclide(s) involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 668; 42 U.S.C. 2051, 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o); 10 CFR 20.2106, 20.2201–20.2204, 20.2206; 10 CFR 2201; 10 CFR Part 34; Executive Order (E.O.) 9397; E.O. 12196, as amended by E.O. 12223 and E.O. 12608; E.O. 12258; E.O. 12399; E.O. 12489; E.O. 12534; E.O. 12610; E.O. 12692.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph ''Categories of individuals covered by the system'';

b. To return data provided by licensee upon request; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on computer media. The computerized records maintained in Oak Ridge, TN, are in a centralized database management system that is password protected. Backup tapes of the database are generated and maintained at a secure, off site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an off site security storage facility accessible only to authorized personnel.

RETRIEVABILITY:

Records are accessed by individual name, social security number, date of birth, and/or by licensee name or number.

SAFEGUARDS:

Information maintained at ORAU is accessible to RES and individuals that have been authorized access by NRC, including all NRC Radiation Safety Officers and ORAU employees that are directly involved in the REIRS project. Reports received and reviewed by the NRC's RES, NRR, NMSS, FSME, and Regional offices are in lockable file cabinets and bookcases in secured buildings. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under key-card access control. Accounts authorizing access to the server and databases are maintained by the ORAU REIRS system administrator. In addition, ORAU maintains a computer security ''firewall'' that further restricts access to the ORAU computer network. Authorization for access must be approved by NRC, ORAU project management, and ORAU computer security. Transmittal of data via the Internet is protected by data encryption.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

REIRS Project Manager, Health Effects Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from licensees; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; NRC Form 5 (Occupational Exposure Record for a Monitoring Period), or equivalent, contractor reports, and Radiation Safety Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–28

SYSTEM NAME:

Merit Selection Records—NRC.

SYSTEM LOCATION:

Primary system—Electronic records: NRC's current contractor facility. Paper records: Headquarters personnel*, Office of Human Resources, NRC, White Flint North Complex, 11555 and 11545 Rockville Pike, Rockville, Maryland. Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2. Electronic records maintained at the NRC's current contractor facility. *The Office of the Inspector General (OIG) maintains the paper files for OIG personnel.

Duplicate system—Duplicate systems exist, in part, within the organization with the position vacancy, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include those who have registered in the system or applied for Federal employment with the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains application information of persons applying to NRC for Federal employment or merit promotion within the NRC, including application for Federal employment (resumes or similar documents); vacancy announcements; job descriptions; examination results; supervisory evaluation or performance appraisal forms; reference forms; and related correspondence. These records include, but are not limited to, applicant information relating to education, training, employment history, earnings, past performance, awards and commendations, citizenship, veteran's preference, birth date, social security

number, and home address and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5101, 7201; 42 U.S.C. 2000e; 42 U.S.C. 2201(d); Executive Order (E.O.) 9397; E.O. 11478, as amended by E.O. 11590 and E.O. 12106; E.O. 12106, as amended by E.O. 12379 and E.O. 12450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare reports for a variety of internal and external sources including the Office of Personnel Management, Merit Systems Protection Board; EEOC and EEO Investigators; Union representatives and EEO Committee representatives, and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper form.

RETRIEVABILITY:

Records are retrieved by vacancy announcement number, applicant name, or social security number.

SAFEGUARDS:

Records are maintained in a password protected automated system and in lockable file cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Human Resources Operations and Policy, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Human Resources Team Leader at the appropriate Regional Office I–IV listed in Addendum I, Part 2. For applicants to the Honor Law Graduate Program—Honor Law Graduate Program Coordinator, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG personnel: Personnel Officer, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The source of this information is the subject individual, or is derived from information supplied by that individual; individual's current and previous supervisors within and outside NRC; pre-employment evaluation data furnished by references and educational institutions whose names were supplied by applicant; and information from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–29 (Revoked.)
NRC–30 (Revoked.)
NRC–31 (Revoked.)
NRC–32

SYSTEM NAME:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.

SYSTEM LOCATION:

Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's National Business Center (DOI/NBC) in Denver, Colorado, as the service provider for the NRC core financial system since May 2002.

Other NRC systems of records contain payment and/or collection transaction records and background information that may duplicate some of the records in this system. These other systems include, but are not limited to:

NRC–5, Contracts Records Files—NRC;

NRC–7, Call Detail Records—NRC;

NRC–10, Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC;

NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC;

NRC–19, Official Personnel Training Records—NRC;

NRC–20, Official Travel Records—NRC;

NRC–21, Payroll Accounting Records—NRC;

NRC–24, Property and Supply Records—NRC; and

NRC–41, Tort Claims and Personal Property Claims Records—NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals the NRC owes/owed money to or who receive/received a payment from NRC and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses,

telephone numbers, Social Security Numbers (SSN), employee identification number (EIN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), Data Universal Numbering System (DUNS) number, fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, property, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 5 U.S.C. 5514; 15 U.S.C. 1681; 26 U.S.C. 6103(m)(2); 31 U.S.C. 37, subchapters I and II; 31 U.S.C. 3701(a)(3); 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3717; 31 U.S.C. 3718; 31 U.S.C. 3720; 42 U.S.C. 2201; 42 U.S.C. 5841; Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589); Debt Collection Improvement Act of 1996 (Pub. L. 104–134); 31 CFR Chapter IX, Parts 900–904; 10 CFR Parts 15, 16, 170, 171; Executive Order (E.O.) 9397; E.O. 12101; and E.O. 12731.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/NBC as the service provider for the NRC core financial system. In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) and the Department of the Interior (DOI) for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act (DCIA) of 1996;

b. To Treasury; the Defense Manpower Data Center, Department of Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors.

c. To the Department of Justice, United States Attorney, Treasury, DOI, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely.

e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal Government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996. Under the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order.

f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer under 26 U.S.C. 6103(m)(2) and under 31 U.S.C. 3711, 3717, and 3718 or common law. Re-disclosure of a mailing address obtained from the IRS may be made only for debt collection purposes, including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996, except that re-disclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer. Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes.

g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program.

h. To prepare W–2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099–C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, EIN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts

owed to the U.S. Government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, salary offset, administrative wage garnishment, and referral to the Department of Justice. The DCIA requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 180 days delinquent. Treasury has the authority to act in the Federal Government's best interest to service, collect, compromise, suspend, or terminate collection action under existing laws under which the debts arise.

l. Information on past due, legally enforceable nontax debts more than 180 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the Government to the debtor, or held by the Government for the debtor under the DCIA's mandatory, Government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts, and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with.

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the Debt Collection Improvement Act of 1996.

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments.

o. If NRC decides or is required to sell a delinquent nontax debt under 31 U.S.C. 3711(I), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

p. If NRC has current and delinquent collateralized nontax debts under 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of Management and Budget, in consultation with Treasury.

q. To Treasury in order to request a payment to individuals owed money by the NRC.

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

s. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on paper, microfiche, and computer media.

RETRIEVABILITY:

Automated information can be retrieved by name, SSN, TIN, DUNS number, license or application number, contract or purchase order number, invoice number, voucher number, and/or vendor code. Paper records are retrieved by invoice number.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER:

Director, Division of Financial Management, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–33

SYSTEM NAME:

Special Inquiry File—NRC.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2201(c), (i) and (o).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, tapes, paper in file folders, and computer media. Documents are maintained in secured vault facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

These records are located in locking metal filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–34 (Revoked.)

NRC–35

SYSTEM NAME:

Drug Testing Program Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at the NRC Regional office locations listed in Addendum I, Part 2 (for a temporary period of time); and at the current contractor testing laboratories, collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program;

requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301 (note); 42 U.S.C. 290dd–2; Executive Order 12564; Pub. L. 100–71, Title V Sec. 503; Pub. L. 100–440, Title VI Sec. 628; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions;

e. For statistical reporting purposes. Statistical reporting will not include personally identifiable information; and

f. For the routine uses specified in paragraphs number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and computer media. Specimens are maintained in appropriate environments.

RETRIEVABILITY:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Stand-alone and network processing systems are password protected and removable media is stored in locked offices, locked desk drawers, or locked file cabinets when unattended. Network processing systems have roles and responsibilities protection and system security plans. Records at laboratory, collection, and evaluation facilities are stored with appropriate security measures to control and limit access to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, licensees, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–36

SYSTEM NAME:

Employee Locator Records—NRC.

SYSTEM LOCATION:

Primary system—Part 1: For Headquarters personnel: Office of Human Resources, NRC, White Flint North Complex, 11545/11555 Rockville Pike, Rockville, Maryland. For Regional personnel: Regional Offices I–IV at the locations listed in Addendum 1, Part 2.

Part 2: Infrastructure and Computer Operations Division, Office of Information Services, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 3: Division of Administrative Services, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, for Incident Response Operations within the Office of Nuclear Security and Incident Response, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the NRC's Regional Offices, at the locations listed in Addendum I, Part 2.

Duplicate system—Duplicate systems may exist, in part, within the organization where an individual actually works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, home address, office organization and location (building, room number, mail stop), telephone number (home, business, cell, and pager), person to be notified in case of emergency (name, address, telephone number), and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301; Executive Order (E.O.) 9397; and E.O. 12656.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is

compatible with the purpose for which the record was collected under the following routine uses:

a. To contact the subject individual's designated emergency contact in the case of an emergency;

b. To contact the subject individual regarding matters of official business;

c. To maintain the agency telephone directory;

d. For internal agency mail services; and

e. The routine use specified in paragraph number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper and computer media.

RETRIEVABILITY:

Information is accessed by name. NRC employees are required to initially use their social security number as their login ID for the Office of Personnel Management's Employee Express, where employees update locator information such as their home address and telephone number, emergency contact, etc.

SAFEGUARDS:

Electronic records are password protected. Paper records are maintained in locked files and/or in controlled access area. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Part 1: For Headquarters personnel: Associate Director for Human Resources Operations and Policy, Office of Human Resources, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001; and for Regional personnel: Human Resources Team Leaders at the Regional Offices listed in Addendum I, Part 2; Part 2: Telecommunications Team Leader, Computer Operations and Telecommunications Branch, Infrastructure and Computer Operations Division, Office of Information Services, NRC, Washington, DC 20555–0001; Part 3: Team Leader, Mail Services, Administrative Services Center, Division of Administrative Services, Office of Administration, NRC, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; Employee Express; NRC Form 15, ''Employee Locator Notification;'' and other related records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–37

SYSTEM NAME:

Information Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Division of Security Operations, Office of Nuclear Security and Incident Response, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include present and former NRC employees, contractors, consultants, licensees, and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify and/or declassify documents (e.g., for the protection of Classified National Security Information and Restricted Data) as well as information identifying the document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165 and 2201(i); Executive Order 12958, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare statistical reports for the Information Security Oversight Office.

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Accessed by name and/or assigned number.

SAFEGUARDS:

Information maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-*

mgmt/disposition.html. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information is classified under Executive Order 12958, as amended, and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f).

NRC–38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary system—Printing and Mail Services Branch, Division of Administrative Services, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include an individual's name and address; and title, occupation, and institutional affiliation, when applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For distribution of documents to persons and organizations listed on the mailing list; and

b. For the routine use specified in paragraph number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer media.

RETRIEVABILITY:

Records are accessed by company name, individual name, or file code identification number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Automated records are password protected.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Team Leader, Printing and Mail Services Team, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–39

SYSTEM NAME:

Personnel Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for an access authorization, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which includes, but

is not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprints, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices and database checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (*e.g.*, grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165, 2201(i), 2201a, and 2284; Executive Order (E.O.) 9397; E.O. 10450, as amended by E.O. 10491, E.O. 10531, E.O. 10548, E.O. 10550, E.O. 11605, E.O. 11785, and E.O. 12107; E.O. 10865, as amended by E.O. 10909 and E.O. 11382, modified by E.O. 12038; E.O. 12958, amended by E.O. 13292; E.O. 12968; E.O. 13467; 10 CFR Parts 10, 11, 14, 25, 50, 73; Atomic Energy Act of 1954, as amended (68 Stat. 919); Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242); Pub. L. 99–399 (100 Stat. 876); OMB Circular No. A–130, Revised; 5 CFR 731, 732, and authorities cited therein.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, and other Federal agencies:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program;

e. To provide licensees information needed for unescorted access or access to safeguard information determinations; and

f. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, tapes, and computer media.

RETRIEVABILITY:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Mass storage of records is protected when unattended by a combination lock and alarm system. Unattended classified records are protected in appropriate security containers in accordance with Management Directive 12.1.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–40

SYSTEM NAME:

Facility Security Access Control Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at NRC Regional Offices and the NRC Technical Training Center at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information regarding: (1) NRC personal identification badges issued for continued access to NRC-controlled space; and (2) records regarding visitors to NRC. The records include, but are not limited to, an individual's name, social security number, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on Government issued credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165 and 2201; 5 CFR Part 2634; Executive Order (E.O.) 9397; E.O. 12958, amended by E.O. 13292.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To control access to NRC classified information and to NRC spaces by human or electronic means.

b. Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes.

c. The electronic image used for the NRC employee personal identification badge may be used for other than security purposes only with the written consent of the subject individual.

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and computer media.

RETRIEVABILITY:

Information is indexed and accessed by individual's name, social security number, identification badge number, employer's name, date of visit, or sponsor's name.

SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or in security areas under guard presence. There is an approved security plan which identifies the physical protective measures and access controls (i.e., passwords and software design limiting access based on each individual's role and responsibilities relative to the system) specific to each system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Sources of information include NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–41

SYSTEM NAME:

Tort Claims and Personal Property Claims Records—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, in the Office of the Chief Financial Officer (OCFO), NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records, including but not limited to, NRC–18, ''Office of the Inspector General (OIG) Investigative Records—NRC,'' and NRC–32, ''Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC,'' may contain some of the information in this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims with NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees' Claims Act and individuals who have matters pending before the NRC that may result in a claim being filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to loss or damage to property and/or personal injury or death in which the U.S. Government may be liable. This information includes, but is not limited to, the individual's name, home address and phone number, work address and phone number, claim forms and supporting documentation, police reports, witness statements, medical records, insurance information, investigative reports, repair/replacement receipts and estimates, litigation documents, court decisions, and other information necessary for the evaluation and settlement of claims and pre-claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* (2000); 31 U.S.C. 3721.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To third parties, including claimants' attorneys, insurance companies, witnesses, potential witnesses, local police authorities where an accident occurs, and others who may have knowledge of the matter to the extent necessary to obtain information that will be used to evaluate, settle, refer, pay, and/or adjudicate claims.

b. To the Department of Justice (DOJ) when the matter comes within their jurisdiction, such as to coordinate litigation or when NRC's authority is limited and DOJ advice or approval is required before NRC can award, adjust, compromise, or settle certain claims.

c. To the appropriate Federal agency or agencies when a claim has been incorrectly filed with NRC or when more than one agency is involved and NRC makes agreements with the other agencies as to which one will investigate the claim.

d. The Department of the Treasury to request payment of an award, compromise, or settlement of a claim.

e. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. This public information, including information concerning the nature, status, and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system of records is stored on paper, in log books, and on computer media.

RETRIEVABILITY:

Information is indexed and accessed by the claimant's name and/or claim number.

SAFEGUARDS:

The paper records and log books are stored in locked file cabinets or locked file rooms and access is restricted to those agency personnel whose official duties and responsibilities require access. Automated records are protected by password.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER:

Assistant General Counsel for Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, claimants, NRC employees involved in the incident, witnesses or others having knowledge of the matter, police reports, medical reports, investigative reports, insurance companies, and attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–42

SYSTEM NAME:

Strategic Workforce Planning Records—NRC.

SYSTEM LOCATION:

Primary system—Technical Training Center, NRC, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

Duplicate system—Duplicate systems may exist, in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED:

Current, prospective, and former NRC employees, experts, consultants, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific information maintained on individuals includes individual skills assessments that identify the knowledge and skills possessed by the individual and the levels of skill possessed, and may include a skills profile containing, but not limited to, their name; service computation date; series and grade; education; work and skills experience; special qualifications; licenses and certificates held; and availability for geographic relocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103; 42 U.S.C. 2201; Executive Order (E.O.) 9397; E.O. 11348, as amended by E.O. 12107; Public Law 104–106, National Defense Authorization Act for Fiscal Year 1996, Sec. 5125, Agency Chief Information Officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records will be to assess the knowledge and skills needed to perform the functions assigned to individuals and their organizations.

Information in the system may be used by the NRC to assess the skills of the staff to develop an organizational training plan/program; to prepare individual training plans; to develop recruitment plans; and to assign personnel. Other offices may maintain similar kinds of records relative to their specific duties, functions, and responsibilities.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, which includes disclosure to other NRC employees who have a need for the information in the performance of their duties, NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the information was collected under the following routine uses:

a. To employees and contractors of other Federal, State, local, and foreign agencies or to private entities in connection with joint projects, working groups, or other cooperative efforts in which the NRC is participating.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in computerized form.

RETRIEVABILITY:

Information may be retrieved by, but not limited to, the individual's name; office; skill level; various skills; education; or work experience.

SAFEGUARDS:

Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel. Access to computerized records requires use of password and user identification codes. Level of access is determined by roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER AND ADDRESS:

Chief, Program Management, Policy Development and Analysis Staff, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, the individual to whom it pertains, system of records NRC–11, supervisors and other NRC officials, contractors, and other agencies or entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–43

SYSTEM NAME:

Employee Health Center Records—NRC.

SYSTEM LOCATION:

Primary system—Employee Health Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at health care facilities operating under a contract or agreement with NRC for health-related services in the vicinity of each of NRC's Regional offices listed in Addendum I, Part 2. NRC's Regional offices may also maintain copies of occupational health records for their employees.

This system may contain some of the information maintained in other systems of records, including NRC–11, ''General Personnel Records (Official Personnel Folder and Related Records)—NRC,'' NRC–17, ''Office of Workers' Compensation Program Records—NRC,'' and NRC–44, ''Employee Fitness Center Records—NRC.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals may include, but is not limited to, their name, date of birth, and Social Security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence, test results submitted to the Health Center staff by the employee; and occupational health records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services.

e. To refer information to private physicians designated by the individual when requested in writing.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, on computer media, and on file cards, logs, x-rays, and other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the individual's name, date of birth, and Social Security number, or any combination of those identifiers.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESSES:

Manager, Employee Assistance and Wellness Services, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR Part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individual's personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–45

SYSTEM NAME:

Digital Certificates for Personal Identity Verification Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Information Services, NRC, White Flint North Complex, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of digital certificates for signature, encryption, and/or authentication purposes; have had their certificates renewed, replaced, suspended, revoked, or denied; have used their certificates to electronically make contact with, retrieve information from, or submit information to an automated information system; or have corresponded with NRC or its contractor concerning digital certificate services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of users, to maintain the system, and to establish accountability and audit controls. System records may include: (a) Applications for the issuance, amendment, renewal, replacement, or revocation of digital certificates, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority; (b) Certificates issued; (c) Certificates denied, suspended, or revoked, including reasons for denial, suspension, or revocation; (d) A list of currently valid certificates; (e) A list of currently invalid certificates; (f) A record of validation transactions attempted with digital certificates; and (g) A record of validation transactions completed with digital certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Electronic Government Act of 2002, 44 U.S.C. Chapter 36; the Paperwork Reduction Act of 1995, 44 U.S.C. 3501; Government Paperwork Elimination Act, 44 U.S.C. 3504; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To agency digital certificate program contractors to compile and maintain documentation on applicants for verifying applicants' identity and authority to access information system applications; to establish and maintain documentation on information sources for verifying applicants' identities; to ensure proper management, data accuracy, and evaluation of the system;

b. To Federal authorities to determine the validity of subscriber digital certificates and other identity attributes;

c. To the National Archives and Records Administration (NARA) for records management purposes;

d. To a public data repository (*only name, e-mail address, organization, and*

public key) to facilitate secure communications using digital certificates; and

e. Any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure of system records to consumer reporting systems is not permitted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically or on paper.

RETRIEVABILITY:

Records are retrievable by an individual's name, e-mail address, certificate status, certificate number, certificate issuance date, or approval role.

SAFEGUARDS:

Technical, administrative, and personnel security measures are implemented to ensure confidentiality, integrity, and availability of the system data stored, processed, and transmitted. Hard copy documents are maintained in locking file cabinets. Electronic records are, at a minimum, password protected. Access to and use of these records is limited to those individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, NARA's General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *http://www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with 36 CFR 1220.38(b), Disposition of Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Infrastructure and Computer Operations Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The sources for information are the individuals who apply for digital certificates, the NRC and contractors using multiple sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the digital certificate program.

EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

1. One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

2. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

3. Executive Boulevard Building, 6003 Executive Boulevard, Rockville, Maryland.

4. Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

5. Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland.

6. 21 Church Street, Rockville, Maryland.

Part 2—NRC Regional Offices

1. NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania.

2. NRC Region II, Sam Nunn Atlanta Federal Center, 23 T85, 61 Forsyth Street, SW., Atlanta, Georgia.

3. NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois.

4. NRC Region IV, Texas Health Resources Tower, 612 E. Lamar Boulevard, Suite 400, Arlington, Texas.

5. High-Level Waste Management Office, 1551 Hillshire Drive, Suite A, Las Vegas, Nevada.

6. NRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 18th day of December, 2008.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Director, Information and Records Services Division, Office of Information Services.

[FR Doc. E8–31458 Filed 1–5–09; 8:45 am]

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