



# Federal Register

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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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# Rules and Regulations

Federal Register

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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 TRANSPORTATION

### 14 CFR Part 97

[Docket No. 30646; Amdt. No. 3303]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective January 22, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2009.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169, or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*Availability—*All SIAPs are available online free of charge. Visit [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:**

Harry J. Hodges, Flight Procedure Standards Branch (AFS-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 rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form

documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

#### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P-NOTAMs.

The SIAPs, as modified by FDC P-NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs 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 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 26, 2008.

**John M. Allen,**

*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of

Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \* *EFFECTIVE UPON PUBLICATION*

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12/16/08	GU	AGANA	GUAM INTL	8/4338	TKOF MINS AND OBSTACLE DP, ORIG
12/16/08	GU	AGANA	GUAM INTL	8/4339	TACAN RWY 24R, ORIG–A
12/16/08	GU	AGANA	GUAM INTL	8/4340	RNAV (GPS) Y RWY 24L, AMDT 1
12/17/08	CO	DENVER	DENVER INTERNATIONAL	8/4536	ILS RWY 7, AMDT 2
12/18/08	CO	PUEBLO	PUEBLO MEMORIAL	8/4717	ILS RWY 26R, AMDT 13A
12/18/08	CO	PUEBLO	PUEBLO MEMORIAL	8/4718	GPS RWY 17, ORIG–A
12/18/08	CO	PUEBLO	PUEBLO MEMORIAL	8/4719	VOR OR TACAN RWY 26R, AMDT 27
12/18/08	CO	PUEBLO	PUEBLO MEMORIAL	8/4720	ILS RWY 8L, AMDT 22B

FDC date	State	City	Airport	FDC No.	Subject
12/18/08	CA	SANTA MARIA	SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD.	8/4721	RNAV (GPS) RWY 12, ORIG
12/18/08	CA	SANTA MARIA	SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD.	8/4722	VOR RWY 12, AMDT 14
12/18/08	CA	SANTA MARIA	SANTA MARIA PUB/CAPT G ALLAN HANCOCK FLD.	8/4723	LOC/DME BC A, AMDT 10B
12/18/08	CO	PUEBLO	PUEBLO MEMORIAL	8/4724	RNAV (GPS) RWY 26R, AMDT 1A
12/19/08	CO	DURANGO	DURANGO-LA PLATA COUNTY	8/4932	VOR/DME RWY 2, AMDT 4B
12/24/08	AK	HOOPER BAY	HOOPER BAY	8/5207	TKOF MINS AND OBSTACLE DP, ORIG
12/24/08	AK	HOOPER BAY	HOOPER BAY	8/5208	RNAV (GPS) RWY 31, ORIG-A
12/24/08	AK	HOOPER BAY	HOOPER BAY	8/5209	VOR/DME RWY 31, ORIG-A.
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5273	RNAV (GPS) RWY 16C, AMDT 1
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5274	VOR/DME RWY 16L/C, AMDT 14
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5275	RNAV (GPS) RWY 34R, AMDT 1
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5276	RNAV (GPS) RWY 34L, ORIG
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5277	RNAV (GPS) RWY 34C, AMDT 1
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5278	RNAV (GPS) RWY 16R, ORIG
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5279	ILS OR LOC RWY 34R, AMDT 1
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5280	RNAV (GPS) RWY 16L, AMDT 2
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5283	ILS OR LOC RWY 34C, AMDT 2 * * * ILS RWY 34C, (CAT II), AMDT 2
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5284	VOR/DME RWY 34C, AMDT 1
12/23/08	WA	SEATTLE	SEATTLE-TACOMA INTL	8/5285	ILS OR LOC RWY 16R, ORIG * * * ILS RWY 16R, (CAT II), ORIG * * * ILS RWY 16R, (CAT III), ORIG
12/23/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/5290	RADAR-1, AMDT 6
12/23/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/5291	VOR/DME OR TACAN RWY 32, AMDT 4
12/23/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/5293	VOR RWY 32, AMDT 21
12/23/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/5294	ILS OR LOC/DME RWY 32, AMDT 4
12/23/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/5295	RNAV (GPS) RWY 32, ORIG
10/24/08	NE	ALLIANCE	ALLIANCE MUNI	8/6004	RNAV (GPS) RWY 30, ORIG-A
10/24/08	NE	ALLIANCE	ALLIANCE MUNI	8/6015	LOC/DME RWY 30, ORIG-A
10/24/08	NE	GRANT	GRANT MUNI	8/6020	VOR/DME RWY 15, ORIG-A

[FR Doc. E9-327 Filed 1-21-09; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30645; Amdt. No 3302]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new

or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective January 22, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2009.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*Availability—*All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit <http://www.nfdc.faa.gov> to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:**

Harry J. Hodges, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, 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 rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums, and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP

amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums, and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums, and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs 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 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 26, 2008.

**John M. Allen,**

*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 12 FEB 2009*

Sylvania, GA, Plantation Airpark, Takeoff Minimums and Obstacle DP, Orig  
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36C, ILS RWY 36C (CAT II), ILS RWY 36C (CAT III), Amdt 15D  
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 18C, Amdt 2B  
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) RWY 36C, Amdt 2B  
Philadelphia, PA, Philadelphia Intl, CONVERGING ILS RWY 17, Amdt 5  
Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 17, Amdt 7  
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 17, Amdt 2  
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 35, Amdt 2  
Manning, SC, Santee Cooper Regional, Takeoff Minimums and Obstacle DP, Orig

*Effective 12 MAR 2009*

Shishmaref, AK, Shishmaref, Takeoff Minimums and Obstacle DP, Orig  
Talladega, AL, Talladega Muni, Takeoff Minimums and Obstacle DP, Amdt 1  
Dubuque, IA, Dubuque Rgnl, RNAV (GPS) RWY 36, Orig  
Grangeville, ID, Idaho County, GPS RWY 7, Orig-A, CANCELLED  
Grangeville, ID, Idaho County, GPS RWY 25, Orig-A, CANCELLED  
Grangeville, ID, Idaho County, RNAV (GPS) RWY 7, Orig  
Grangeville, ID, Idaho County, RNAV (GPS) RWY 25, Orig  
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, RNAV (GPS) RWY 20, Amdt 1  
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, RNAV (GPS) RWY 29, Amdt 1  
St Louis, MO, Lambert-St Louis Intl, RNAV (GPS) RWY 12L, Amdt 2  
Tunica, MS, Tunica Muni, Takeoff Minimums and Obstacle DP, Orig  
Marysville, OH, Union County, NDB RWY 27, Amdt 5B, CANCELLED  
Aguadilla, PR, Rafael Hernandez, Takeoff Minimums and Obstacle DP, Orig  
Sparta, TN, Upper Cumberland Rgnl, ILS OR LOC RWY 4, Amdt 1  
Sparta, TN, Upper Cumberland Rgnl, NDB RWY 4, Amdt 4  
Bowie, TX, Bowie Muni, RNAV (GPS) RWY 35, Amdt 1  
Bowie, TX, Bowie Muni, Takeoff Minimums and Obstacle DP, Orig  
Price, UT, Carbon County Rgnl/Buck Davis Field, Takeoff Minimums and Obstacle DP, Amdt 4  
Dublin, VA, New River Valley, Takeoff Minimums and Obstacle DP, Amdt 2

Franklin, VA, Franklin Muni-John Beverly Rose, Takeoff Minimums and Obstacle DP, Amdt 2

Clintonville, WI, Clintonville Muni, NDB RWY 32, Amdt 7, CANCELLED

Manitowoc, WI, Manitowoc County, ILS OR LOC RWY 17, Amdt 5

Medford, WI, Taylor County, GPS RWY 27, Orig-A, CANCELLED

Medford, WI, Taylor County, NDB RWY 34, Amdt 7

Medford, WI, Taylor County, RNAV (GPS) RWY 27, Orig

Medford, WI, Taylor County, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. E9-324 Filed 1-21-09; 8:45 am]

BILLING CODE 4910-13-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR PARTS 230, 240 and 260

[Release Nos. 33-8999; 34-59246; 39-2549; File No. S7-02-09]

RIN 3235-AK26

### Temporary Exemptions for Eligible Credit Default Swaps To Facilitate Operation of Central Counterparties To Clear and Settle Credit Default Swaps

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final temporary rules; request for comments.

**SUMMARY:** We are adopting interim final temporary rules providing exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for certain credit default swaps to facilitate the operation of one or more central counterparties for those credit default swaps. The interim final temporary rules define such credit default swaps as “eligible credit default swaps” and exempt them from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met. Our interim final temporary rules also define as a “qualified purchaser,” for purposes of the “covered securities” provisions of Section 18 of the Securities Act, any “eligible contract participant,” as defined in Section 1a(12) of the Commodity Exchange Act (“CEA”), other than a person who is an eligible contract participant under Section 1a(12)(C) of the CEA, to whom a sale of a eligible credit default swap is made in reliance on the interim final temporary Securities Act exemption.

**DATES: Effective Date:** The interim final temporary rules are effective January 22, 2009 until September 25, 2009.

**Comment Date:** Comments on the interim final temporary rules should be received on or before March 23, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/interim-final-temp.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-02-09 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-02-09. This file number should be included on the subject line if e-mail is used. To help us 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/interim-final-temp.shtml>). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Amy M. Starr, Senior Special Counsel, or Kim McManus, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 551-3500, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** We are adopting interim final temporary Rule 239T and a temporary amendment to Rule 146 under the Securities Act of 1933 (“Securities Act”).<sup>1</sup> We are also adopting interim final temporary Rule 12a-10T and Rule 12h-1(h)T under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and interim final

temporary Rule 4d-11T under the Trust Indenture Act of 1939 (“Trust Indenture Act”).<sup>3</sup>

## I. Background

In response to the recent turmoil in the financial markets, we have taken multiple actions to protect investors and ensure the integrity of the nation’s securities markets.<sup>4</sup> Today we are taking further action designed to address concerns related to the market in credit default swaps (“CDS”). The over-the-counter (“OTC”) market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.<sup>5</sup> Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,<sup>6</sup> or

<sup>3</sup> 15 U.S.C. 77aaa *et seq.*

<sup>4</sup> A nonexclusive list of the Commission’s actions to stabilize financial markets during this credit crisis include: adopting a package of measures to strengthen investor protections against naked short selling, including rules requiring a hard T+3 close-out, eliminating the options market maker exception of Regulation SHO, and expressly targeting fraud in short selling transactions (*See* Securities Exchange Act Release No. 58572 (September 17, 2008), 73 FR 54875 (September 23, 2008)); issuing an emergency order to enhance protections against naked short selling in the securities of primary dealers, Federal National Mortgage Association (“Fannie Mae”), and Federal Home Loan Mortgage Corporation (“Freddie Mac”) (*See* Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008)); taking temporary emergency action to ban short selling in financial securities (*See* Securities Exchange Act Release No. 58592 (September 18, 2008), 73 FR 55169 (September 24, 2008)); approving emergency rulemaking to ensure disclosure of short positions by hedge funds and other institutional money managers (*See* Securities Exchange Act Release No. 58591A (September 21, 2008), 73 FR 55557 (September 25, 2008)); proposing rules to strengthen the regulation of credit rating agencies and making the limits and purposes of credit ratings clearer to investors (*See* Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008)); entering into a Memorandum of Understanding with the Board of Governors of the Federal Reserve System (“FRB”) to make sure key federal financial regulators share information and coordinate regulatory activities in important areas of common interest (*See* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the Board of Governors of the Federal Reserve System Regarding Coordination and Information Sharing in Areas of Common Regulatory and Supervisory Interest (July 7, 2008), [http://www.sec.gov/news/press/2008/2008-134\\_mou.pdf](http://www.sec.gov/news/press/2008/2008-134_mou.pdf)).

<sup>5</sup> In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

<sup>6</sup> *See* Policy Objectives for the OTC Derivatives Market, The President’s Working Group on

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

central counterparties (“CCPs”).<sup>7</sup> These events have emphasized the need for CCPs as mechanisms to help control such risks.<sup>8</sup> A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President’s Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority<sup>9</sup> and, in furtherance of this recommendation, the Commission, the FRB and the Commodity Futures Trading Commission (“CFTC”) signed a Memorandum of Understanding<sup>10</sup> that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the federal securities laws, is in the public interest. The interim final temporary rules we are adopting are intended to facilitate the ability of one or more CCPs for CDS to operate by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations (“reference obligations”) of a single entity (a “reference entity”) or on a particular security or other debt obligation (“reference security”), or an

index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take synthetic positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.<sup>11</sup> This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.<sup>12</sup>

The operation of a well-regulated CCP can significantly reduce counterparty risks by preventing the failure of a single market participant from having a disproportionate effect on the overall market. A CCP would novate bilateral trades, which would result in the CCP entering into separate contractual arrangements with both counterparties—becoming buyer to one and seller to the other.<sup>13</sup> Today, CDS agreements generally are negotiated and entered into bilaterally, but both parties may agree that one party may novate the agreement and substitute another party to take responsibility for performance, by acting as the counterparty, under the agreement. In a CCP arrangement, both parties entering a CDS would novate their trades to the CCP, and the CCP would stand in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS would be effectively concentrated in the CCP.

In companion actions to these interim final temporary rules, we are temporarily exempting, subject to conditions, a clearing agency acting as a CCP from the requirement to register as a clearing agency under Section 17A of the Exchange Act<sup>14</sup> solely to perform

the functions of a clearing agency for certain CDS transactions, and also certain eligible contract participants<sup>15</sup> and others from certain Exchange Act requirements with respect to certain CDS.<sup>16</sup> We also are temporarily exempting any exchange that effects transactions in certain CDS from the requirements under Sections 5 and 6 of the Exchange Act<sup>17</sup> to register as a national securities exchange, and any broker or dealer that effects transactions on an exchange in certain CDS from the requirements of Section 5 of the Exchange Act.

In connection with these actions to facilitate the operation of these CCPs for the CDS market, we believe that it is appropriate and necessary to provide temporary exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the companion exemptive orders and in the exemptions themselves. We believe that these interim final temporary rules, and the exemptive orders we are providing under the Exchange Act, will facilitate the operation of one or more CCPs that will clear and settle CDS transactions while enabling us to provide oversight to the CDS market.

We believe that the operation of one or more CCPs in accordance with our exemptions likely would improve the efficiency and effectiveness of the CDS market, provide for increased transparency of exposures to particular reference entities or reference securities, and increase available information about reference entities or reference securities. The conditions in the companion exemptive orders will enable us to oversee the development of CDS CCPs and exchanges as they evolve, and to take such additional action as we may deem necessary to promote the public interest and the protection of investors. Moreover, the limited duration of the exemptions and the interim final temporary rules provided today will enable one or more CCPs and CDS exchanges to become operational while we gain useful experience with the CDS market and evaluate the public input, including comments, we receive on the temporary rules and exemptions.

## II. Discussion of the Interim Final Temporary Rules and Amendments

We are adopting interim final temporary rules and amendments to

Financial Markets (November 14, 2008), <http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf> (“Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.”).

<sup>7</sup> See The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

<sup>8</sup> See *id.*

<sup>9</sup> See Policy Objectives for the OTC Derivatives Market, The President’s Working Group on Financial Markets (November 14, 2008), <http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf>. See also Policy Statement on Financial Market Developments, The President’s Working Group on Financial Markets (March 13, 2008), [http://www.treas.gov/press/releases/reports/pwgpolicystatementkturmoil\\_03122008.pdf](http://www.treas.gov/press/releases/reports/pwgpolicystatementkturmoil_03122008.pdf); Progress Update on March Policy Statement on Financial Market Developments, The President’s Working Group on Financial Markets (October 2008), <http://www.treas.gov/press/releases/reports/q4progress%20update.pdf>.

<sup>10</sup> See Memorandum of Understanding Between the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission Regarding Central Counterparties for Credit Default Swaps (November 14, 2008), <http://www.treas.gov/press/releases/reports/finalmou.pdf> (“MOU”).

<sup>11</sup> See Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements (“BIS”), available at <http://www.bis.org/statistics/otcder/dt1920a.pdf>.

<sup>12</sup> CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

<sup>13</sup> “Novation” is a “process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.” Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, *Recommendations for Central Counterparties* (November 2004) at 66.

<sup>14</sup> 15 U.S.C. 78q-1.

<sup>15</sup> See 7 U.S.C. 1a(12).

<sup>16</sup> See Securities Exchange Act Release Nos. 59164 and 59165 (December 24, 2008).

<sup>17</sup> 15 U.S.C. 78e and 78f.

existing rules (collectively, “interim final temporary rules”) to provide certain conditional exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act.

#### A. Scope of the Interim Final Temporary Rules

Our authority over the OTC market for CDS is limited. Specifically, Section 2A of the Securities Act and Section 3A of the Exchange Act limit our authority over “swap agreements” as defined in Section 206A of the Gramm-Leach-Bliley Act.<sup>18</sup> For those CDS that are swap agreements, the exclusion from the definition of security in Section 2A of the Securities Act and Section 3A of the Exchange Act and related provisions will continue to apply. Our action today does not affect these CDS, and these interim final temporary rules do not apply to them. For those CDS that are not swap agreements (“non-excluded CDS”), our action today provides certain conditional exemptions from the provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act and is designed to encourage the development and operation of one or more CDS CCPs and CDS exchanges.<sup>19</sup>

#### B. Securities Act Rule 239T

We are adopting interim final temporary Securities Act Rule 239T to exempt certain CDS (“eligible CDS”)<sup>20</sup>

<sup>18</sup> 15 U.S.C. 77b(b)–1 and 15 U.S.C. 78c–1. Section 2A of the Securities Act and Section 3A of the Exchange Act excludes both a non-security-based and a security-based “swap agreement” from the definition of “security” under Section 2(a)(1) of the Securities Act, 15 U.S.C. 77b(a)(1) and Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a “swap agreement” as “any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act \* \* \*) \* \* \* the material terms of which (other than price and quantity) are subject to individual negotiation. \* \* \*” 15 U.S.C. 78c note.

<sup>19</sup> Section 28 of the Securities Act authorizes us to exempt any person, security or transaction from any provision of the Securities Act by rule or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. 15 U.S.C. 77z–3. Similarly, Section 36 of the Exchange Act gives us the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. 15 U.S.C. 78mm. Finally, Section 304(d) of the Trust Indenture Act authorizes us to exempt conditionally or unconditionally any person, security or transaction from any Trust Indenture Act provision by rules or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act. 15 U.S.C. 77d(d).

<sup>20</sup> As we discuss below, we have included a definition of “eligible credit default swap” in interim final temporary Securities Act Rule 239T.

that are being or will be issued or cleared by a CCP satisfying the conditions set forth in the companion exemptions, or registered as a clearing agency under Section 17A of the Exchange Act (“Registered or Exempt CCP”), to eligible contract participants from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a) of the Securities Act.<sup>21</sup> Securities Act Rule 239T will permit the offer and sale of such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP without requiring compliance with Section 5 of the Securities Act, and communications used in connection with such offers and sales will not be subject to Section 12(a)(2) liability under the Securities Act.

Absent this exemption, the Securities Act may require registration of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. We believe that the interim final temporary rules exempting offers and sales of such eligible CDS by a Registered or Exempt CCP will facilitate the use by eligible contract participants of CCPs for eligible CDS. Indeed, without also exempting the offers and sales of the eligible CDS by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the Exchange Act exemptive orders. In addition, the Securities Act, Exchange Act and Trust Indenture Act exemptions should encourage market participants to clear their CDS through the CCPs.

Under Securities Act Rule 239T, an eligible CDS would be exempt from the registration requirements of the Securities Act if it is or will be issued or cleared by a Registered or Exempt CCP, and if the eligible CDS is offered and sold only to an “eligible contract participant” (as defined in Section 1a(12) of the CEA as in effect on the date of adoption of this rule, other than a person who is an eligible contract participant under Section 1a(12)(C) of the CEA).<sup>22</sup> We have included a definition of eligible CDS solely for purposes of the interim final temporary

<sup>21</sup> 15 U.S.C. § 77q. This exemption is consistent with the Securities Act exemptions for standardized options and security futures products. See Section 3(a)(14) [15 U.S.C. § 77c(a)(14)] and Securities Act Rule 238 [17 CFR 230.238].

<sup>22</sup> See 7 U.S.C. 1(a)(12). The exemption would be limited to those persons defined as eligible contract participants in the statute and would not extend to those persons that are included in the definition through regulatory action by the CFTC. See 7 U.S.C. 1(a)(12)(C).

rules. Under this definition, an eligible CDS is a bilateral executory derivative contract not subject to individual negotiation (1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving the reference obligation(s) or reference entity(ies) within a certain time, and (2) the agreement for which includes the:

- Specification of the reference obligation or obligor; or, in the case of a reference group or index thereof, all of the reference obligations or obligors comprising any such group or index);
- Term of the agreement;
- Notional amount upon which payment obligations are calculated;
- Credit-related events that trigger a settlement obligation; and
- Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

Securities Act Rule 239T will permit the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP without requiring compliance with Section 5 of the Securities Act, while assuring the availability of information to buyers and sellers of CDS, due to certain information conditions in the companion exemptive orders,<sup>23</sup> and preserving anti-fraud liability under Section 17(a) of the Securities Act, which currently applies to security-based swap agreements. Securities Act Rule 239T also provides an exemption from the liability provisions of Securities Act Section 12. Thus, oral or written communications used in connection with the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP in reliance on the rule will not be

<sup>23</sup> We note that among the conditions of the exemptions, or representations in the exemptive requests on which we are relying, from clearing registration are that: (1) Information is available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS; and (2) the reference entity, the issuer of the reference security, or the reference security is one of the following: an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; a foreign private issuer that has securities listed outside the United States and has its principal trading market outside the United States; a foreign sovereign debt security; an asset-backed security, as defined in Regulation AB [17 CFR 229.1100], issued in a registered transaction with publicly available distribution reports; an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or the Government National Mortgage Association (“Ginnie Mae”); or indexes in which 80 percent or more of the index’s weight is comprised of these reference entities or reference securities.

subject to liability under Securities Act Section 12(a)(2).

The Securities Act exemption in the interim final temporary rule is limited to offers and sales to eligible contract participants (as defined in Section 1a(12) of the CEA as in effect on the date of adoption of the rule, other than a person that is an eligible contract participant under Section 1a(12)(C) of the CEA). Under Securities Act Section 2A, a security-based swap agreement that is entered into between eligible contract participants is not permitted to be registered under the Securities Act, but the provisions of Securities Act Section 17(a) continue to apply to such transactions. The operation of one or more CCPs pursuant to the actions we are taking today will allow such security-based swap agreements to continue to be entered into between eligible contract participants and then be novated to the CCP. The Securities Act exemption is intended to limit investor involvement in eligible CDS that are issued or cleared by a Registered or Exempt CCP to eligible contract participants, who are those persons Congress determined were qualified to engage in activities in the generally unregulated (other than with respect to the antifraud provisions of the Securities Act and the Exchange Act)<sup>24</sup> OTC CDS market.

The Securities Act interim final temporary rule also provides that any offer or sale of an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP by or on behalf of the issuer of a security, an affiliate of such issuer, or an underwriter, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will constitute a "contract for sale of," "sale of," "offer for sale," or "offer to sell" such security under Section 2(a)(3) of the Securities Act. This provision is intended to ensure that an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP cannot be used by an issuer, affiliate of an issuer or underwriter to circumvent the

<sup>24</sup> See Title III of the Commodity Futures Modernization Act of 2000 (Pub. L. 106-554) and the definition of eligible contract participant in Title I of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 1a(12)]. The term "eligible contract participant" generally includes various regulated financial institutions, business enterprises that meet certain tests relating to total assets or net worth, certain pension funds, state and local governments, and certain wealthy individuals.

In addition, the provisions of Section 16 of the Exchange Act apply to security-based swap agreements. See 15 U.S.C. 78p(g). The exemptions are available only with regard to non-excluded CDS satisfying the exemption's conditions and not other types of derivative contracts.

registration requirements of Section 5 with respect to an issuer's security for such eligible CDS.<sup>25</sup> As a result, a transaction by such persons in an eligible CDS that is or will be issued or cleared by a Registered or Exempt CCP having such securities of the issuer also is a transaction in the issuer's securities that must be registered under the Securities Act, unless an exemption from registration is available.

Further, we are adopting on an interim final temporary basis an amendment to Securities Act Rule 146. Under the temporary amendment to Securities Act Rule 146, eligible contract participants that are sold eligible CDS in reliance on interim final temporary Securities Act Rule 239T will be defined as "qualified purchasers" under Section 18(b)(3) of the Securities Act and thereby such eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP will be considered "covered securities" under Section 18 of the Securities Act and exempt from state blue sky laws.<sup>26</sup> We are adopting this amendment because we believe that eligible contract participants are the kinds of sophisticated investors who do not require the protections of registration under state securities laws. In this regard, as we discuss above, Congress determined that eligible contract participants were the types of persons that were able to engage in activities in the OTC CDS market unregulated by the Commission and preempted the application of certain state laws to transactions in OTC security-based swap agreements, including CDS.<sup>27</sup> We believe that defining such eligible contract participants as "qualified purchasers" for purposes of engaging in transactions in eligible CDS in reliance on temporary Securities Act Rule 239T would be consistent with such Congressional intent.

#### *C. Exchange Act Rule 12a-10T and Rule 12h-1(h)T*

We also are adopting two interim final temporary rules relating to Exchange Act registration of eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP. We are adopting interim final temporary Exchange Act Rule 12a-10T to exempt

<sup>25</sup> This provision is similar to the condition in the Securities Act exemption in Rule 238 for standardized options [17 CFR 230.238] and in Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] relating to security futures products.

<sup>26</sup> State securities regulation of covered securities generally is limited under Section 18(b). Under Section 18(b)(3), covered securities are securities offered and sold to qualified purchasers, as defined by the Commission.

<sup>27</sup> See 7 U.S.C. 16(e)(2).

eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(a) of the Exchange Act under certain conditions.<sup>28</sup> We also are adopting an interim final temporary amendment to Exchange Act Rule 12h-1 to exempt eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP from the provisions of Section 12(g) of the Exchange Act under certain conditions.<sup>29</sup> This exemption is the same as that available to standardized options issued by a registered options clearing agency and security futures products issued by a registered clearing agency, and this temporary rule should facilitate the operation of the CCPs.

#### *D. Trust Indenture Act Rule 4d-11T*

We are adopting a new interim final temporary rule under Section 304(d) of the Trust Indenture Act that would exempt any eligible CDS, as defined in Securities Act Rule 239T and offered and sold in reliance on Securities Act Rule 239T, from having to comply with the provisions of the Trust Indenture Act.<sup>30</sup> We believe an exemption from the Trust Indenture Act is appropriate in this situation.

The Trust Indenture Act is aimed at addressing problems that unregulated debt offerings posed for investors and the public,<sup>31</sup> and provides a mechanism for debtholders to protect and enforce their rights with respect to the debt. We do not believe that the protections contained in the Trust Indenture Act are needed at this time to protect eligible contract participants to whom a sale of an eligible CDS is made in reliance on interim final temporary Securities Act Rule 239T. The identified problems that the Trust Indenture Act is intended to address do not occur in the offer and sale of eligible CDS.<sup>32</sup> For example, eligible CDS are contracts between two parties and, as a result, do not raise the same problem regarding the ability of parties to enforce their rights under the instruments as would, for example, a

<sup>28</sup> 15 U.S.C. 78l(a).

<sup>29</sup> 15 U.S.C. 78l(g).

<sup>30</sup> The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts securities that are exempt under Securities Act Section 3(a) but does not exempt from the Trust Indenture Act securities that are exempt by Commission rule. Accordingly, while Securities Act Rule 239T would exempt the offer and sale of eligible CDS satisfying certain conditions from all the provisions of the Securities Act (other than Section 17(a)), the Trust Indenture Act would continue to apply.

<sup>31</sup> See 15 U.S.C. 77bbb(a).

<sup>32</sup> 15 U.S.C. 77bbb(b).

debt offering to the public. Moreover, through novation, the CCP becomes the counterparty to the buyer and the seller, and each would look directly to the CCP to satisfy the obligations under the eligible CDS. As a consequence, enforcement of contractual rights and obligations under the eligible CDS would occur directly between such parties, and the Trust Indenture Act provisions would not provide any additional meaningful substantive or procedural protections.

Accordingly, due to the nature of eligible CDS as bilateral contracts that will have been issued or cleared by Registered or Exempt CCPs, we do not believe the protections contained in the Trust Indenture Act are currently needed with respect to these instruments. Therefore, we believe the exemption is necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act.

#### E. Request for Comment

We request and encourage any interested person to submit comments regarding the interim final temporary rules. In particular, we solicit comment on the following questions:

- We are interested in understanding what type of non-excluded CDS would not be eligible for these exemptions. Are there credit swaps that would not be encompassed within the scope of the exemptions and that should be covered?
- What are the amounts and types of CDS that may not satisfy the conditions for the exemptions?
- Is the definition of eligible CDS appropriate and does it include the types of CDS that should be within the exemptions or should there be another definition? Does the definition of eligible CDS include all the appropriate or relevant material terms of a CDS? Should we require more specificity as to the terms, including final settlement valuations?
- Each of the temporary exemptions contains particular conditions. Should the Securities Act exemption in temporary Securities Act Rule 239T be conditioned on the eligible CDS being issued or cleared by a Registered or Exempt CCP? If not, why not?
- Should there be information conditions in the Securities Act exemptions themselves regarding the reference entities or reference securities similar to the information requirements in the CCP exemptive orders? If so, what type of information conditions should be included and why? Is additional or different information from that

contained in the CCP exemption orders appropriate?

- Are the Securities Act, Exchange Act and Trust Indenture Act exemptions appropriate? If not, why not? Given the voluntary nature of using a CCP, should we take a different approach?

- The Securities Act exemption also provides that eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and are entered into with an issuer of a security, or an underwriter or affiliate of such issuer, if such security is delivered in settlement or whose value is used to determine the amount of the settlement obligation, will be considered an offer and sale of such security at that time. Are there circumstances in which the application of the Securities Act to such security of the issuer should not apply at the time of the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP? Are there securities or obligations used in CDS transactions that are not debt obligations? If yes, please explain.

- The Securities Act exemption is limited to offers and sales to eligible contract participants. Should the exemption be limited in this manner? If not, why not? Are there persons who invest in CDS now in the OTC market that would not be able to take advantage of the exemptions? If yes, please explain the categories of persons and why the exemptions should include such persons.
- The definition of “qualified purchaser” for purposes of the interim final temporary amendment to Securities Act Rule 146 applies only to eligible contract participants that have been sold eligible CDS in reliance on the new interim final temporary exemption in Securities Act Rule 239T. Is this an appropriate definition and should eligible contract participants that are sold eligible CDS pursuant to Securities Act Rule 239T be considered “qualified purchasers” for purposes of Section 18 of the Securities Act?

- Should the Securities Act exemption be limited to an exemption from Section 5 and Section 12 of the Securities Act? Please explain your reasoning in detail.

- Should we exempt eligible CDS that have been issued or cleared by a Registered or Exempt CCP from the registration requirements of the Exchange Act? If not, why?

- The conditions of the temporary Exchange Act and Trust Indenture Act exemptions are the same as the conditions to the temporary Securities Act exemption. Is this appropriate or should there be different conditions relating to the Exchange Act and Trust

Indenture Act exemptions? If yes, please explain.

- The interim final temporary rules include an exemption from the application of the Trust Indenture Act for eligible CDS that are offered and sold in reliance on interim final Securities Act Rule 239T. Is this exemption appropriate or are there contractual protections in the Trust Indenture Act that should be included as mandatory provisions of an eligible CDS contract that is or will be issued or cleared by a Registered or Exempt CCP? If yes, please explain in detail.

### III. Transition and Expiration Date of Interim Final Temporary Rules

We are adopting the interim final rules on a temporary basis until September 25, 2009. We anticipate that this term of this exemption will provide us with adequate time to evaluate the availability of the exemptions applicable to CDS CCPs and non-excluded CDS, and whether any conditions or provisions of such exemptions should be modified.

Adoption of the interim final temporary rules, which will be effective on [effective date] and will continue in effect until September 25, 2009, will facilitate the development of one or more CCPs as well as our review of the CDS market. We have included several requests for comment in this release. We will consider the public comments we receive in determining whether we should revise the interim final temporary rules in any respect, as well as whether we should consider extending the exemptions. The rules will expire and cease to be effective on September 25, 2009 unless we act to extend the effective date or revise the interim final temporary rules.

### IV. Other Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.<sup>33</sup> This requirement does not apply, however, if the agency “for good cause finds \* \* \* that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”<sup>34</sup> Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.<sup>35</sup> This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.<sup>36</sup> We, for good cause,

<sup>33</sup> See 5 U.S.C. 553(b).

<sup>34</sup> *Id.*

<sup>35</sup> See 5 U.S.C. 553(d).

<sup>36</sup> *Id.*

find that notice and solicitation of comment before adopting the new rules is impracticable, unnecessary, or contrary to the public interest.

For the reasons we discussed throughout this release, we believe that we have good cause to act immediately to adopt these rules on an interim final temporary basis. The OTC market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.<sup>37</sup> Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,<sup>38</sup> or CCPs.<sup>39</sup> These events have emphasized the need for CCPs as mechanisms to help control such risks.<sup>40</sup> A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President's Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority<sup>41</sup> and, in furtherance of this recommendation, the Commission, the FRB and the CFTC signed a Memorandum of Understanding<sup>42</sup> that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action

to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the federal securities laws, thus is in the public interest. The interim final temporary rules we are adopting are intended to facilitate the ability of one or more CCPs for CDS to operate by providing exemptions from certain regulatory provisions that might otherwise prevent them from engaging in such activities. Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP may have to be registered under the Securities Act, the eligible CDS that have been so issued or cleared may have to be registered as a class under the Exchange Act and the provisions of the Trust Indenture Act may need to be complied with. We believe that the interim final temporary rules exempting the registration of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP under certain conditions will facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of the eligible CDS from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders. We emphasize that we are requesting comments on the interim final temporary rules and will carefully consider any comments that we receive and respond to them in a subsequent release. Moreover, these interim final temporary rules will expire on September 25, 2009. Setting a termination date for the interim final temporary rules will necessitate further Commission action no later than the end of that period if we determine to continue the same, or similar, requirements contained in the interim final temporary rules. We find that there is good cause to have the rules effective as interim final temporary rules on January 22, 2009 and that notice and public procedure in advance of effectiveness of the interim final temporary rules is impracticable, unnecessary and contrary to the public interest.<sup>43</sup>

<sup>43</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines").

## V. Paperwork Reduction Act

The interim final temporary rules do not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),<sup>44</sup> nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for a CCP that is or will be issuing or clearing eligible CDS. Accordingly, we are not submitting the interim final temporary rules to the Office of Management and Budget for review in accordance with the PRA.<sup>45</sup> We request comment on whether our conclusion that there are no collections of information is correct.

## VI. Cost-Benefit Analysis

We are adopting interim final temporary rules under the Securities Act, the Exchange Act and the Trust Indenture Act that would exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP and offered and sold only to eligible contract participants from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and from the provisions of the Trust Indenture Act. These interim final temporary rules are intended to facilitate the operation of one or more CCPs to act as a clearing agency in the CDS market to reduce some of the risks in the CDS market.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payment under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take synthetic positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.<sup>46</sup> This growth has coincided with a significant rise in the types and

<sup>44</sup> 44 U.S.C. 3501 *et seq.*

<sup>45</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>46</sup> See Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements ("BIS"), available at <http://www.bis.org/statistics/otcder/dt1920a.pdf>.

<sup>37</sup> In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

<sup>38</sup> See Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), <http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf> ("Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.")

<sup>39</sup> See The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

<sup>40</sup> See *id.*

<sup>41</sup> See Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), <http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf>. See also Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008), [http://www.treas.gov/press/releases/reports/pwgpolicystatemkturmoil\\_03122008.pdf](http://www.treas.gov/press/releases/reports/pwgpolicystatemkturmoil_03122008.pdf); Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008), <http://www.treas.gov/press/releases/reports/q4progress%20update.pdf>.

<sup>42</sup> See MOU, *supra* note 10.

number of entities participating in the CDS market.<sup>47</sup>

In a CCP arrangement, both parties entering a CDS would novate their trades to the CCP, and the CCP would stand in as the counterparty to all parties of the CDS it clears. Through this novation process, the counterparty risk of a CDS would be effectively concentrated in the CCP.

#### A. Benefits

We are providing exemptive orders that will facilitate the operation of CCPs for the CDS market. In connection with these actions, we are adopting exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions described in the companion exemptive orders and in the exemptions themselves. The conditions and representations in the companion exemptive orders and exemptions require that information be available about the terms of the CDS, the creditworthiness of the CCP or any guarantor, and the clearing and settlement process for the CDS. Additionally, the conditions require that financial information about the reference entity, the issuer of the reference security, or the reference security be publicly available. We believe that these interim final temporary rules and the exemptions we are providing under the Exchange Act, will facilitate the operation of CCPs while enabling us to provide oversight to the non-excluded CDS market. We believe that the operation of one or more CCPs in accordance with our exemptions likely would improve the efficiency and effectiveness of the CDS market, provide clearing participants with increased transparency of exposures to particular reference entities or reference securities, and increase available information about reference entities or reference securities.

Absent an exemption, the offer and sale of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP would have to be registered under the Securities Act, the eligible CDS that are or have been issued or cleared by a Registered or Exempt CCP would have to be registered as a class under the Exchange Act, and the provisions of the Trust Indenture Act would apply. We believe that the interim final temporary rules exempting

the registration of eligible CDS issued or cleared by a Registered or Exempt CCP under certain conditions will facilitate the use by eligible contract participants of CDS CCPs. Without also exempting the offers and sales of eligible CDS issued or cleared by a Registered or Exempt CCP from the registration requirements of the Securities Act and the Exchange Act and the provisions of the Trust Indenture Act, we believe that the CCPs would not be able to operate in the manner contemplated by the exemptive orders.

The interim final temporary exemptions also will treat eligible CDS issued or cleared by a Registered or Exempt CCP under the Securities Act and the Exchange Act in the same manner as certain other types of derivative contracts, such as security futures products and standardized options.<sup>48</sup> A Registered or Exempt CCP issuing or clearing eligible CDS will benefit from the temporary exemptions because it will not have to file registration statements with us covering the offer and sale of the eligible CDS. The registration form most applicable to a CCP is a Form S-20, which is the form that is used by options clearing houses that do not qualify for our exemption in Securities Act Rule 238<sup>49</sup> from registering the offer and sale of standardized options. If a CCP is not required to register the offer and sale of eligible CDS (on Form S-20, for example), it would not have to incur the costs of such registration, including legal and accounting costs. Some of these costs, of course, such as the costs of obtaining audited financial statements, may still be incurred as a result of the operations of the entity as a CCP and the regulatory oversight of the central counterparty operations. In addition, if any of the CCPs are entities that are subject to the periodic reporting requirements of the Exchange Act, the cost of filing a registration statement covering the eligible CDS would be lessened further as the information regarding the CCP already would be prepared. The availability of exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act also would mean that CCPs would not incur the costs of preparing disclosure documents describing eligible CDS and from preparing indentures and arranging for the services of a trustee.

#### B. Costs

The interim final temporary rules exempting offers and sales of eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP should facilitate the use by eligible contract participants of CDS CCPs that are the subject of exemptive orders at minimal cost to the CCP or investors. Because the interim final temporary rules are self-executing, the costs of being able to rely on such exemptions, we believe, are minimal.

Absent an exemption, a CCP may have to file a registration statement covering the offer and sale of the eligible CDS, may have to satisfy the applicable provisions of the Trust Indenture Act, and may have to register the class of eligible CDS that it has issued or cleared under the Exchange Act, which would provide investors with civil remedies in addition to antifraud remedies. While a CCP registration statement covering eligible CDS (or the offer and sale of such eligible CDS) may provide certain information about the CCP, CDS contract terms, and the identification of reference entities or reference securities, it would not necessarily provide the type of information necessary to assess the credit risk of the reference entity or reference security. Further, while a CCP registration statement would provide information to the CDS market participants, as well as to the market as a whole, a condition of the clearing agency exemption in the exemptive orders is that the CCPs make their audited financial statements and other information about themselves publicly available. We recognize that a consequence of the exemptions would be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act. While an investor would be able to pursue an antifraud action in connection with the purchase and sale of eligible CDS under Exchange Act Section 10(b),<sup>50</sup> it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.<sup>51</sup> We could still pursue an antifraud action in the offer and sale of eligible CDS issued or cleared by a CCP.<sup>52</sup>

<sup>47</sup> CDSs were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms and hedge funds have entered the CDS market.

<sup>48</sup> See, e.g., Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78j], and Exchange Act Rule 12h-1(d) and (e) [17 CFR 240.12h-1(d) and (e)].

<sup>49</sup> 17 CFR 230.238.

<sup>50</sup> 15 U.S.C. 78j(b).

<sup>51</sup> 15 U.S.C. 77k and 77l.

<sup>52</sup> See 15 U.S.C. 77q and 15 U.S.C. 78j(b).

## VII. Consideration of Impact On the Economy, Burden On Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act<sup>53</sup> requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)<sup>54</sup> of the Securities Act and Section 3(f)<sup>55</sup> of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We are adopting interim final temporary rules that would exempt eligible CDS issued or cleared by a Registered or Exempt CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act. Because our interim final temporary exemptions will be available to any Registered or Exempt CCP offering and selling eligible CDS, we do not believe that our actions today will impose a burden on competition. We also believe that the ability to settle CDS through CCPs will improve the transparency of the CDS market and provide greater assurance to participants as to the capacity of the eligible CDS counterparty to perform its obligations under the eligible CDS. We believe that increased transparency in the CDS market could help to decrease further market turmoil and thereby facilitate the capital formation process.

## VIII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim final temporary rules contained in this release will not have a significant economic impact on a substantial number of small entities. The interim final temporary rules exempt eligible CDS that are or will be issued or cleared by a Registered or Exempt CCP. None of the entities that are eligible to meet the requirements of the exemption from registration under Section 17A is a small entity. For this reason, the interim

final temporary rules should not have a significant economic impact on a substantial number of small entities.

## IX. Statutory Authority and Text of the Rules and Amendments

The rules and amendments described in this release are being adopted under the authority set forth in Sections 18, 19 and 28 of the Securities Act; Sections 12(h), 23(a) and 36 of the Exchange Act; and Section 304(d) of the Trust Indenture Act.

### List of Subjects

17 CFR Parts 230, 240 and 260.

Reporting and recordkeeping requirements, Securities.

### Text of the Rules and Amendments

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations as follows:

#### PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 230.146 is amended by adding paragraph (c)T to read as follows:

#### § 230.146 Rules under section 18 of the Act.

\* \* \* \* \*

(c)T *Temporary definition of eligible contract participant as qualified purchaser.* For purposes of Section 18(b)(3) of the Act (15 U.S.C. 77r(b)(3)), the term “qualified purchaser” shall mean any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12))) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act that has been sold an eligible credit default swap (as defined in Rule 239T of this Act) in reliance on Rule 239T of this Act. This temporary rule will expire on September 25, 2009.

■ 3. Section 230.239T is added to read as follows:

#### § 230.239T Temporary exemption for eligible credit default swaps.

(a) Except as expressly provided in paragraph (b) and (c) of this section, the

Act does not apply to any eligible credit default swap that is:

(1) Issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission; and

(2) Offered and sold only to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12))) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) *Offers and sales.* Any offer or sale of an eligible credit default swap pursuant to this section by or on behalf of the issuer of an identified security that is to be delivered if there is a credit-related event or whose value is used to determine the amount of the settlement obligation, an affiliate of such issuer, or an underwriter, will constitute a “contract for sale of,” “sale of,” “offer for sale,” or “offer to sell” such identified security under Section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

(d) *Definition of Eligible Credit Default Swap.* For purposes of this section, an eligible credit default swap is a bilateral executory derivative contract not subject to individual negotiation:

(1) in which a buyer makes payments to the seller and, in return, receives a payout if there is a default or other credit event involving identified obligation(s) or identified entity(ies) within a certain time; and

(2) The agreement for which includes the:

(i) Specification of the identified obligation or obligor; or, in the case of an identified group or index thereof, all of the identified obligations or obligors comprising any such group or index;

(ii) Term of the agreement;

(iii) Notional amount upon which payment obligations are calculated;

(iv) Credit-related events that trigger a settlement obligation; and

(v) Obligations to be delivered if there is a credit-related event or, if it is a cash settlement, the obligations whose value is to be used to determine the amount of settlement obligation under the eligible credit default swap.

(e) This temporary rule will expire on September 25, 2009.

<sup>53</sup> 15 U.S.C. 78w(a)(2).

<sup>54</sup> 15 U.S.C. 77b(b).

<sup>55</sup> 15 U.S.C. 78c(f).

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

■ 4. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 5. Section 240.12a-10T is added to read as follows:

**§ 240.12a-10T Temporary exemption of eligible credit default swaps from Section 12(a) of the Act.**

(a) The provisions of Section 12(a) of the Act (15 U.S.C. 78l(a)) do not apply in respect of any eligible credit default swap, as defined in Rule 239T of the Securities Act of 1933 (17 CFR 230.239T) issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission, that will be purchased by or sold to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12))) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act.

(b) This temporary rule will expire on September 25, 2009.

■ 6. Section 240.12h-1 is amended by adding paragraph (h)T to read as follows:

**§ 240.12h-1 Exemptions from registration under section 12(g) of the Act.**

\* \* \* \* \*

(h)T any eligible credit default swap, as defined in Rule 239T of the Securities Act of 1933 (17 CFR 230.239T), issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission that will be purchased by or sold to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12))) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act. This

temporary rule will expire on September 25, 2009.

**PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939**

■ 7. The authority citation for Part 260 continues to read as follows:

**Authority:** 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

■ 8. Section 260.4d-11T is added to read as follows:

**§ 260.4d-11T Temporary exemption for eligible credit default swaps offered and sold in reliance on Securities Act of 1933 Rule 239T (§ 230.239T).**

Any eligible credit default swap (as defined in Rule 239T of this chapter, 17 CFR 230.239T), whether or not issued under an indenture, is exempt from the Act if offered and sold in reliance on Rule 239T of this chapter. This temporary rule will expire on September 25, 2009.

By the Commission.  
Dated: January 14, 2009.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. E9-1123 Filed 1-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2008-0705; FRL-8748-7]

**Approval and Promulgation of Implementation Plans; Nevada; Vehicle Inspection and Maintenance Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act, EPA is approving certain revisions, and disapproving certain other revisions, to the Nevada State Implementation Plan submitted by the Nevada Division of Environmental Protection. These revisions relate to the application of the State's vehicle inspection and maintenance program to vehicles operated on Federal installations. EPA is also correcting certain plan revisions related to this subject that EPA previously approved in error. The intended effect is to ensure that vehicles operated on Federal installations are subject only to those requirements of the State's vehicle inspection and maintenance program that apply in the same manner and to the same extent to nongovernmental entities.

**DATES:** *Effective Date:* This rule is effective on February 23, 2009.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2008-0705 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 947-4147, [kaplan.eleanor@epa.gov](mailto:kaplan.eleanor@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we", "us" and "our" refer to EPA.

**Table of Contents**

- I. Proposed Action
- II. Public Comments
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On September 25, 2008 (73 FR 55466), under the Clean Air Act (CAA or "Act"), EPA proposed to approve certain revisions, and to disapprove certain other revisions, to the Nevada State Implementation Plan (SIP) submitted by the Nevada Division of Environmental Protection (NDEP). These revisions relate to the application of the State's vehicle inspection and maintenance (I/M) program to vehicles operated on Federal installations. EPA also proposed to correct certain SIP revisions related to this subject that EPA previously approved in error.

Specifically, EPA proposed to approve paragraphs (a), (b) and (c) of subsection (2) of Nevada Administrative Code (NAC) section 445B.595 ("Inspections of vehicles owned by State or political subdivisions or operated on federal installations"). NDEP submitted NAC 445B.595 to EPA on May 11, 2007. We proposed to approve these paragraphs of NAC 445B.595(2) because they extend the same vehicle I/M testing, standards, and certification requirements to motor vehicles operated on Federal installations as apply to nongovernmental entities, consistent with CAA section 118(a). See our September 25, 2008 proposed rule at 73 FR 55467. By the same token, we

proposed to disapprove paragraph (d) of NAC 445B.595(2) because it would establish an additional vehicle I/M requirement for motor vehicles operated on Federal installations that do not apply to nongovernmental entities and thereby would exceed the limits on the waiver of sovereign immunity established in CAA section 118(a). See our proposed rule at 73 FR 55468.

In our September 25, 2008 proposed rule, we also proposed to rescind our previous approval of paragraph (d) of NAC 445B.595(2) and our previous approvals of another State vehicle I/M requirement, paragraph (d) of NAC 445B.461(3). We approved both of these provisions in our 2004 approval of the State's vehicle I/M program in Las Vegas Valley and Boulder City, and we approved NAC 445B.461(3) again in our 2008 approval of the State's update to its mobile source SIP. See 69 FR 56351 (September 21, 2004) and 73 FR 38124 (July 3, 2008). We proposed these rescissions under the error correction authority provided to us under CAA section 110(k)(6). As explained in our proposed rule at 73 FR 55468, we proposed to rescind our previous approvals of NAC 445B.595(2)(d) and NAC 445B.461(3)(d) because these provisions establish certain additional requirements under the State's vehicle I/M program for motor vehicles operated on Federal installations that do not apply to nongovernmental entities and thus are inconsistent with the limits of sovereign immunity established in CAA section 118(a).

Our September 25, 2008 proposed rule provides additional background information and a more detailed rationale for our actions summarized above.

## II. Public Comments

EPA's September 25, 2008 proposed rule provided a 30-day public comment period. No comments were submitted.

## III. EPA Action

As authorized under section 110(k) of the Clean Air Act, and for the reasons provided in summary fashion herein and in more detail in our proposed rule, we are approving NDEP's submittal on May 11, 2007 of paragraphs (a), (b), and (c) of NAC 445B.595(2) as consistent with all applicable CAA requirements but disapproving paragraph (d) of NAC 445B.595(2) as inconsistent with the limits on the waiver of sovereign immunity established in CAA section 118(a). In addition, under CAA section 110(k)(6), we are rescinding our previous approvals of NAC 445B.461(3)(d) and 445B.595(2)(d) since they would otherwise set forth

additional requirements under the vehicle I/M program for motor vehicles operated on Federal installations that do not apply to nongovernmental entities and thus would be inconsistent with CAA section 118(a).

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 23, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 21, 2008.

**Laura Yoshi,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart DD—Nevada

■ 2. Section 52.1470 is amended by:

- a. Adding paragraph (c)(48)(i)(A)(2);
- b. Adding paragraph (c)(71)(i)(A)(3); and
- c. Adding paragraph (c)(71)(i)(A)(4) to read as follows:

**§ 52.1470 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(48) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Previously approved on September 21, 2004, in paragraph (c)(48)(i)(A)(1) of this section and now deleted from the

SIP without replacement: Nevada Administrative Code (NAC) sections: 445B.461(3)(d) and 445B.595(2)(d).

\* \* \* \* \*

(71) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Previously approved on July 3, 2008, in paragraph (c)(71)(i)(A)(2) of this section and now deleted from the SIP without replacement: Nevada Administrative Code (NAC) section: 445B.461(3)(d).

(4) New or amended rules related to mobile sources, including Nevada's

vehicle inspection and maintenance program in Las Vegas Valley/Boulder City and Truckee Meadows: Nevada Administrative Code, chapter 445B (January 2007 revision by the Legislative Counsel Bureau), paragraphs (a), (b), and (c) of subsection (2) of section 445B.595, "Inspections of vehicles owned by State or political subdivisions or operated on federal installations."

\* \* \* \* \*

[FR Doc. E9-903 Filed 1-21-09; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 74, No. 13

Thursday, January 22, 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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-22039; Directorate Identifier 2005-NE-33-AD]

RIN 2120-AA64

#### Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshift Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf75. That AD currently requires replacing the O-ring on the check valve piston in the lubrication unit at repetitive intervals. This proposed AD would require the same repetitive replacements and would require incorporating Modification Tf75 as terminating action to the repetitive O-ring replacements. Modification Tf75 replaces the check valve piston with a piston design not requiring an O-ring. This proposed AD results from the European Aviation Safety Agency (EASA) and Turbomeca S.A. mandating the incorporation of Modification Tf75. We are proposing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

**DATES:** We must receive any comments on this proposed AD by March 23, 2009.

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

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

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

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

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

#### FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [james.lawrence@faa.gov](mailto:james.lawrence@faa.gov); telephone (781) 238-7176; fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-22039; Directorate Identifier 2005-NE-33-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

##### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

##### Discussion

On February 7, 2007, we issued AD 2005-17-17R1, Amendment 39-14940 (72 FR 6925, February 14, 2007). That AD requires replacing the O-ring on the check valve piston in the lubrication unit at repetitive intervals. EASA, which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf75. EASA advises that these engines could experience an uncommanded in-flight shutdown, which could result in a forced autorotation landing and damage to the helicopter.

##### Actions Since AD 2005-17-17R1 Was Issued

Since AD 2005-17-17R1 was issued, EASA and Turbomeca have mandated that the check valve piston in the lubrication unit be replaced with a check valve piston not requiring an O-ring, no later than May 31, 2009, by incorporating Modification Tf75.

##### Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 319 79 4075, Version B, dated May 14, 2008. That MSB describes procedures for incorporating Modification Tf75, which replaces the check valve piston with one not requiring an O-ring. EASA classified this MSB as mandatory and issued AD 2008-0170 to ensure the airworthiness of these Arrius 2F turboshaft engines in Europe.

##### Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, EASA has kept us informed of the situation described above. We have examined the findings of EASA, reviewed all available

information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**FAA’s Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing the O-ring on the check valve piston in the lubrication unit at repetitive intervals. This proposed AD would also require incorporating Modification Tf75 within 5 months after the AD effective date, as terminating action to the repetitive O-ring replacements. The proposed AD would require that you do these actions using the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD would affect 94 Arrius 2F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it would take about one work-hour per engine to perform an O-ring replacement, and about one work-hour to incorporate Modification Tf75. The average labor rate is \$80 per work-hour. Required parts would cost about \$16 per engine for O-ring replacement, and about \$20 per engine for incorporating Modification Tf75. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$18,424.

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–14940 (72 FR 6925, February 14, 2007) and by adding a new airworthiness directive, to read as follows:

**Turbomeca S.A:** Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 23, 2009.

**Affected ADs**

(b) This AD supersedes AD 2005–17–17R1, Amendment 39–14940, as terminating action to the repetitive O-ring replacements required by that AD.

**Applicability**

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

**Unsafe Condition**

(d) This AD results from the European Aviation Safety Agency (EASA) and Turbomeca S.A. mandating the incorporation of Modification Tf75. The actions specified in this AD are intended to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

**Compliance**

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

**O-Ring Replacement**

(f) Replace the O-ring on the check valve piston in the lubrication unit at the intervals specified in Table 1 of this AD. Use the Instructions to be Incorporated paragraphs 2.A. through 2.C.(2) of Turbomeca Alert Service Bulletin No. A319 79 4802, Update No. 1, dated April 3, 2006, to replace the O-ring.

TABLE 1—COMPLIANCE TIMES FOR O-RING REPLACEMENT

If the class of oil is:	Then replace the O-ring by the later of:	Thereafter, replace the O-ring within:
(1) HTS or unknown. ....	300 hours time-since-new (TSN) or 50 hours after March 21, 2007 (effective date of AD 2005–17–17R1).	300 hours time-since-last replacement (TSR).
(2) STD .....	450 hours TSN or 50 hours after March 21, 2007 (effective date of AD 2005–17–17R1).	500 hours TSR.

**Mandatory Terminating Action**

(g) Within 5 months after the effective date of this AD, do the following mandatory terminating action to the repetitive O-ring replacements:

(1) Incorporate Turbomeca Modification Tf75 by replacing the check valve piston in the lubrication unit, with a check valve piston requiring no O-ring.

(2) Use the Instructions to be Incorporated paragraphs 2.A. through 2.B.(1)(r) of Turbomeca Mandatory Service Bulletin No. 319 79 4075, Version B, dated May 14, 2008, to replace the check valve piston.

**Alternative Methods of Compliance**

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

**Related Information**

(i) EASA AD 2008–0170, dated September 25, 2008, also addresses the subject of this AD.

(j) Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: [noria-dallas@turbomeca.com](mailto:noria-dallas@turbomeca.com); telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: <http://www.turbomeca-support.com>, for a copy of the service information identified in this AD.

(k) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [james.lawrence@faa.gov](mailto:james.lawrence@faa.gov); telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on January 13, 2009.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*  
[FR Doc. E9–1186 Filed 1–21–09; 8:45 am]

**BILLING CODE 4910–13–P**

# Notices

Federal Register

Vol. 74, No. 13

Thursday, January 22, 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

### Center for Nutrition Policy and Promotion; Agency Information Collection Activities; Proposed Collection: Comment Request—MyPyramid Interactive Information Collection for Registration, Login, Food Intake and Physical Activity Assessment Information

**AGENCY:** Center for Nutrition Policy and Promotion, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension without change of a currently approved collection MyPyramid Tracker and Menu Planner, on-line dietary and physical activity self-assessment tools.

**DATES:** Written comments on this notice must be submitted on or before March 23, 2009.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Comments may be sent to:* Jackie Haven, Director, Nutrition Marketing and Communications Division, Center for Nutrition Policy and Promotion,

United States Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, Virginia, 22302. Comments may also be submitted via fax to the attention of Donna Johnson-Bailey at 703-305-3300 or via e-mail to { [donna.johnson-bailey@cnpp.usda.gov](mailto:donna.johnson-bailey@cnpp.usda.gov) }. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food, Nutrition and Consumer Services during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Donna Johnson-Bailey, (703) 305-7600.

**SUPPLEMENTARY INFORMATION: Title:** MyPyramid Tracker and Menu Planner Information Collection for Registration, Login and Food Intake and Physical Activity Assessment.

*OMB Number:* 0584-0535.

*Expiration Date:* June 30, 2009.

*Type of Request:* Extension without change of a currently approved collection.

*Abstract:* MyPyramid Tracker (<http://www.mypyramidtracker.gov>) and MyPyramid Menu Planner (<http://www.mypyramidtracker.gov/planner/launchPage.aspx>) are Internet based diet and physical activity self-assessment tools. The MyPyramid Menu Planner tool is a simplified version of the Tracker. The Menu Planner simplifies both the user interface and the underlying data. It allows users to compare their food choices to MyPyramid recommendations. All users may choose to save their information by registering with a username and password. Individual can also use the MyPyramid Tracker and Menu Planner without registration.

Both MyPyramid Tracker and MyPyramid Menu Planner translate science-based guidance into practical information and promote nutrition education by increasing awareness

about the quality of a person's diet. The tools allow users to input their daily food intakes and physical activity information and obtain a quick summary of overall daily diet quality, activity status, and energy balance in relation to the current Dietary Guidelines for Americans. Information can be tracked for up to 1 year. The tools generate motivational education messages tailored to the user's personal assessment results.

This collection will be ongoing. The information collected will only be accessible by the user. If the tools need to be improved, such as Dietary Guidelines updates or technical enhancements, formative assessment will be completed by students in cooperation with universities or colleges. Analysis of feedback from formative testing will be completed prior to the release of any updates or Web site enhancements for the general public.

*Affected Public:* 3,310,722 Individuals and Households, College Students—computer users.

*Estimated Number of Responses per Respondent:* 365 daily.

*Estimated Total Annual Burden on Respondents:* 6,843,466 hours.

*Estimated Total Annual Responses:* 30,019,978.

*Estimated Number of MyPyramid Tracker Respondents:* Of the 3,310,722 total respondent population and based on MyPyramid Tracker activity for the past 12 months, 2,660,704 respondents have registered, logged on and entered food and physical activity data for at least 1 day. Approximately 10% repeatedly used the Tracker on a daily basis over the past year. This would equate to approximately 22,173 repeat users visiting the site each month during one year.

The number of subjects included in formative assessments for MyPyramid Tracker will include about 9 college students, who will log in and add food intake and physical activity data for approximately 3 days.

*Estimated Time Per Response:* For both the MyPyramid Tracker and the Menu Planner, it will take individuals approximately 1 minute (.0167) to register for a system logon ID and password. It typically takes users 30 seconds (.0083) to log in to the system and approximately 30 minutes (.5) to complete food and physical activity data entry log for 1 day.

TABLE 1—MYPYRAMID TRACKER ESTIMATED BURDEN HOURS

Affected public	Description of activity	(b) Form No.	(c) Number respondents	(d) Frequency of responses per respondent	(e) Est. total annual responses (c x d)	(f) Hours per response	(g) Total burden (e x f)
<b>Reporting Burden</b>							
Individual and households.	One time registration ..	N/A	2,660,704	1	2,660,704	0.0167	44,433.76
	One time Log-in .....	N/A	2,660,704	1	2,660,704	0.0083	22,083.84
	Food/Physical Activity Data Entry for 1 Day.	N/A	2,660,704	1	2,660,704	0.5	1,330,352.00
	Repeat Log-ins for 1 Year.	N/A	22,173	364	8,070,972.00	0.0083	66,989
	Repeat Food/Physical Activity Data Entries for 1 Year.	N/A	22,173	364	8,070,972.00	0.5	4,035,486.00
Total Burden Estimates.	.....	.....	2,660,704.00	.....	24,124,056.00	.....	5,499,344.67

TABLE 2—MYPYRAMID TRACKER ESTIMATED BURDEN HOURS—STUDENT FORMATIVE RESEARCH

Affected public	Description of activity	(b) Form No.	(c) Number respondents	(d) Frequency of responses per respondent	(e) Est. total annual responses	(f) Hours per response	(g) Total burden (e x f)
<b>Reporting Burden</b>							
Students .....	One time registration ..	N/A	9	1.00	9.00	0.01670	0.15
	One time Log-in .....	N/A	9	1.00	9.00	0.0083	0.07
	Food/Physical Activity Data Entry for 1 Day.	N/A	9	1.00	9.00	0.5	4.50
	Repeat Log-ins for 1 Year.	N/A	9	3.00	27.00	0.0083	0.22
	Repeat Food/Physical Activity Data Entries for 1 Year.	N/A	9	3.00	27.00	0.5	13.50
Total Burden Estimates.	.....	.....	9.00	.....	81.00	.....	18.45

*Estimated Number of MyPyramid Menu Planner Respondents:* Of the 3,310,722 total respondent population and based on MyPyramid Menu Planner activity for the past 12 months, 650,000 respondents have registered, logged on

and entered food and physical activity data for at least one day. Approximately 10% used the Tracker on a daily basis over the past year. This would equate to approximately 5,420 repeat users visiting the site each month during one

year. The number of subjects included in the formative assessment is about 9 college students who will use the same log in process to create 3 days of food intake and physical activity data.

TABLE 3—MYPYRAMID MENU PLANNER ESTIMATED BURDEN HOURS

Affected public	Description of activity	(b) Form No.	(c) Number respondents	(d) Frequency of responses per respondent	(e) Est. total annual responses	(f) Hours per response	(g) Total burden (e x f)
<b>Reporting Burden</b>							
Individual and households.	One time registration ..	N/A	650,000	1.00	650,000.00	0.01670	10,855.00
	One time Log-in .....	N/A	650,000	1.00	650,000.00	0.0083	5,395.00
	Food/Physical Activity Data Entry for 1 Day.	N/A	650,000	1.00	650,000.00	0.5	325,000.00
	Repeat Log-ins for 1 Year.	N/A	5,420	364.00	1,972,880.00	0.0083	16,374.90
	Repeat Food/Physical Activity Data Entries for 1 Year.	N/A	5,420	364.00	1,972,880.00	0.5	986,440.00

TABLE 3—MYPYRAMID MENU PLANNER ESTIMATED BURDEN HOURS—Continued

Affected public	Description of activity	(b) Form No.	(c) Number respondents	(d) Frequency of responses per respondent	(e) Est. total annual responses	(f) Hours per response	(g) Total burden (e x f)
Total Burden Estimates.	.....	.....	650,000.00	.....	5,895,760.00	.....	1,344,064.90

TABLE 4—MYPYRAMID MENU PLANNER ESTIMATED BURDEN HOURS—STUDENT FORMATIVE RESEARCH

Affected public	Description of activity	(b) Form No.	(c) Number respondents	(d) Frequency of responses per respondent	(e) Est. total annual responses (c x d)	(f) Hours per response	(g) Total burden (e x f)
<b>Reporting Burden</b>							
Students .....	One time registration ..	N/A	9	1.00	9.00	0.01670	0.15
	One time Log-in .....	N/A	9	1.00	9.00	0.0083	0.07
	Food/Physical Activity Data Entry for 1 Day.	N/A	9	1.00	9.00	0.5	4.50
	Repeat Log-ins for 1 Year.	N/A	9	3.00	27.00	0.0083	0.22
	Repeat Food/Physical Activity Data Entries for 1 Year.	N/A	9	3.00	27.00	0.5	13.50
Total Burden Estimates.	.....	.....	9	.....	81.00	.....	18.45

Dated: January 13, 2009.

**Robert Post,**

*Deputy Director, Center for Nutrition Policy and Promotion.*

[FR Doc. E9-1141 Filed 1-21-09; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**Chesapeake Bay Watershed Initiative**

**AGENCY:** Natural Resources Conservation Service and Commodity Credit Corporation, United States Department of Agriculture (USDA).

**ACTION:** Notice of availability of program funds for the Chesapeake Bay Watershed Initiative.

**SUMMARY:** The Commodity Credit Corporation (CCC) announces the availability of an additional \$23 million of technical and financial assistance funds in fiscal year (FY) 2009 through the Chesapeake Bay Watershed Initiative to agricultural producers in eligible states. These states are: Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia. The Chesapeake Bay Watershed Initiative funds are available to help producers implement natural resources conservation practices on agricultural lands in the Chesapeake Bay watershed.

**DATES:** January 22, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Lillian Woods, Acting Director, Conservation Planning and Technical Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013; phone (202) 720-8851; fax (202) 720-2998. Submit electronic requests for additional information to: [dan.lawson@wdc.usda.gov](mailto:dan.lawson@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:** CCC hereby announces up to \$23 million to provide technical and financial assistance to producers under the Chesapeake Bay Watershed Initiative in FY 2009.

Section 1240Q of the Food Security Act, as added by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (2008 Act), established the Chesapeake Bay Watershed Initiative and defined the Chesapeake Bay Watershed to mean all tributaries, backwaters, and side channels, including their watersheds, draining into the Chesapeake Bay. This area includes portions of the states of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia. The NRCS administers the Chesapeake Bay Watershed Initiative and carries out program implementation using funds, facilities, or authorities of CCC. The Initiative gives special, but not exclusive, consideration to producers' applications in the following

river basins: Susquehanna River, Shenandoah River, Potomac River (including North and South Potomac), and the Patuxent River.

The Chesapeake Bay Watershed Initiative helps agricultural producers improve water quality and quantity, and restore, enhance, and preserve soil, air, and related resources in the Chesapeake Bay watershed through the implementation of conservation practices. These conservation practices reduce soil erosion and nutrient levels in ground and surface water, improve, restore, and enhance wildlife habitat, and help address air quality and related natural resource concerns. The Initiative is carried out through the various natural resources conservation programs authorized under subtitle D, Title XII of the Food Security Act of 1985, 16 U.S.C. 3830-3839bb-5. The Chesapeake Bay Watershed Initiative assistance in FY 2009 will be delivered through the Environmental Quality Incentives Program (EQIP). All EQIP requirements and policies will apply (see 7 CFR Part 1466).

Individuals interested in applying for Chesapeake Bay Watershed Initiative assistance may contact their local USDA service center in the eligible Chesapeake Bay Watershed Initiative states. For a listing of local service centers, consult: <http://offices.sc.egov.usda.gov/locator/app?agency=nrsc>.

Signed in Washington, DC on January 14, 2009.

**Arlen L. Lancaster,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

[FR Doc. E9-1168 Filed 1-21-09; 8:45 am]

**BILLING CODE 3410-16-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Sequoia National Forest; California; Piute Fire Restoration

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The project area for this analysis is the approximately 32,890 acre portion of the Piute Fire on National Forest System lands; approximately 1,700 acres of the fire restoration project area fall within the former Clear Creek Project area. The USDA Forest Service, Sequoia National Forest will prepare an environmental impact statement (EIS) for a proposal to treat approximately 2,260 acres of fire killed and damaged trees, both through removal and treating on site, in the Piute Fire burned area; some of these treatment areas are within the former Clear Creek Project area. The land allocations within the fire area, as identified in the Sierra Nevada Forest Plan Supplemental EIS, are old forest emphasis, general forest, threat zone, defense zone, protected activity centers for spotted owls, spotted owl home range core areas, and riparian conservation areas adjacent to perennial, seasonal, and ephemeral streams.

There is a need in the Piute Fire area for: (1) the recovery of the economic value of timber killed or severely injured by the fire, in an expeditious manner, for the purposes of reducing the cost of reforestation activities and supplying wood fiber to local sawmills; (2) the prevention of a future high intensity, stand-replacing wildfire by reducing long term fuel loading for the purpose of facilitating future fire management techniques (prescribed fire and wildland fire use); (3) the recruitment and retention of both short and long term large down logs and snag habitat, for the purpose of providing sufficient burned forest habitat for dependent species; (4) the re-vegetation of conifer stands and other plant and animal habitats that were burned; (5) the improvement of long term soil productivity, by repairing roads and establishing effective ground cover in

severely burned areas, for the purpose of minimizing soil erosion and begin to replace soil organic material; and (6) the reduction of safety hazards to the public and forest workers from falling trees.

**DATES:** Comments concerning the scope of the analysis must be received by February 23, 2009. The draft environmental impact statement is expected August 2009, and the final environmental impact statement is expected February 2010.

**ADDRESSES:** Send written comments to: Sue Porter, Project Leader, Kern River Ranger District, P.O. Box 9, Kernville, CA 93238, and Attention: Piute Fire Restoration. Comments may be sent via e-mail [smpor@fs.fed.us](mailto:smpor@fs.fed.us) or via facsimile to 760-376-3795.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

**FOR FURTHER INFORMATION CONTACT:** Sue Porter, 760-376-3781, extension 650. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

##### Purpose and Need for Action

In June and July 2008, the Piute Fire burned approximately 37,025 acres on the Sequoia National Forest, Bureau of Land Management and private lands. The fire burned with varying intensity across a variety of plant communities (chaparral, oak woodland, Jeffrey pine, mixed conifer, pinyon-juniper, and desert shrub). Approximately 60% of the forested areas of the fire were burned such that 75-100% of the trees were killed and the duff and litter that protected the soil was completely consumed. In these areas, the fire resulted in the destruction of wildlife habitat for sensitive species and the loss of old forest characteristics. Near the end of the fire, two localized, heavy rainstorm events occurred within the Piute Fire area. These events resulted in high rates of soil erosion in the fire area, sedimentation of streams, and debris flows that extended into the Kern River from Erskine Creek and Clear Creek and into the Walker Basin from Thompson Creek.

The fire killed tens of thousands of trees that, if left untreated, will

contribute to extremely high fuel loading over time. As these dead trees fall and fuel accumulates, future fires will be even more severe. Treating the dead and dying tree component of the landscape is the first step in restoring forest health, reducing long term fuel loading, and restoring the historic fire regime, thereby reducing the impacts of fires on the future forest and contributing to the restoration of old forest habitats. Without treatment to begin to restore the fire area, significant additional impacts to soil, water quality, heritage resources, and wildlife habitat are likely over the short and long term.

This environmental impact statement (EIS) will address: treating the dead and dying tree component of the landscape, reforesting burned conifer areas, and repairing roads to reduce sediment delivery to streams. The process of completing these treatments would reduce soil erosion by immediately increasing effective ground cover (limbs, twigs, and small boles) and maintain soil productivity for tree growth.

#### Proposed Action

The proposed action would remove dead and dying trees, using ground-based logging methods, to recover the economic value of timber on about 510 acres and treated on site to reduce future fuel loading on an additional 1,750 acres. Trees posing a safety hazard to the public and forest workers would be removed along roads. Roads would be reconstructed and repaired to facilitate access to treatment areas and to improve watershed condition. Slash would be treated to provide ground cover and reduce short term fuel loading. Conifer seedlings would be planted to begin reforestation of the fire area. Protection would be applied to sensitive plant and wildlife species and heritage resources.

The proposed action is consistent with the 1988 Sequoia National Forest Land and Resource Management Plan, as amended by the Sierra Nevada Forest Plan Amendment Record of Decision, and the 1990 Mediated Settlement Agreement.

#### Possible Alternatives

Other alternatives will be developed based on significant issues identified during the scoping process for the environmental impact statement. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) No Action, and (2) the Proposed Action.

**Responsible Official**

Tina Terrell, Forest Supervisor, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257, is the responsible official. As the responsible official, she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 215).

**Nature of Decision To Be Made**

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to remove or treat fire killed and damaged trees in the project area, to plant conifer seedlings, to undertake road improvements, or to implement fuel treatments.

**Scoping Process**

The notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: January 13, 2009.

**Tina J. Terrell,**

*Forest Supervisor.*

[FR Doc. E9-1043 Filed 1-21-09; 8:45 am]

**BILLING CODE 3410-11-M**

**DEPARTMENT OF COMMERCE****Submission for OMB Review;  
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** U.S. Census Bureau.

**Title:** 2008 Panel of the Survey of Income & Program Participation, Wave 3 Topical Modules.

**OMB Control Number:** 0607-0944.

**Form Number(s):** SIPP 28305(L)  
Director's Letter; SIPP/CAPI Automated Instrument; SIPP 28003 Reminder Card.

**Type of Request:** Revision of a currently approved collection.

**Burden Hours:** 143,303.

**Number of Respondents:** 94,500.

**Average Hours Per Response:** 30 minutes.

**Needs and Uses:** The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 3 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were previously cleared.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2008 Panel Wave 3 are Welfare Reform and Retirement and Pension. The Welfare Reform topical module was previously conducted in the SIPP 2004 Panel Wave 8 instrument. The Retirement and Pension topical module was previously conducted in the SIPP 2004 Panel Wave 7 instrument. Wave 3 interviews will be conducted from May 1, 2009 through August 31, 2009.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and includes thirteen waves which began September 1, 2008. All household members 15

years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions.

The Census Bureau developed the 2008 Panel Wave 3 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

**Affected Public:** Individuals or Households.

**Frequency:** Every 4 months.

**Respondent's Obligation:** Voluntary.

**Legal Authority:** Title 13, United States Code, Section 182.

**OMB Desk Officer:** Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dhynek@doc.gov](mailto:dhynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail ([bharrisk@omb.eop.gov](mailto:bharrisk@omb.eop.gov)).

Dated: January 14, 2009.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-1124 Filed 1-21-09; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### **Proposed Information Collection; Comment Request; Omnibus Notice for: Comprehensive Economic Development Strategy; Requirements for Approved Construction Investments; Award Amendment Requests and Project Service Maps; and Property Management**

**AGENCY:** Economic Development Administration (EDA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, as amended.

**DATES:** Written comments must be submitted on or before March 23, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Maureen Klovers, Program Analyst, Office of Regional Affairs, Room 7019, Economic Development Administration, Washington, DC 20230, telephone (202) 482-2785, facsimile (202) 482-2838 (or via the Internet at [mklovers@eda.doc.gov](mailto:mklovers@eda.doc.gov)).

**SUPPLEMENTARY INFORMATION:** The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth, and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applicants for, and recipients of, EDA investment assistance. Four separate information

collections expiring April 30, 2009, are combined in this notice for efficiency and economy purposes and are proposed to be reinstated without change: A. Comprehensive Economic Development Strategy (OMB Control No. 0610-0093); B. Requirements for Approved Construction Investments (OMB Control No. 0610-0096); C. Request To Amend an Investment Award and Project Service Maps (OMB Control No. 0610-0102); and D. Property Management (OMB Control No. 0610-0103).

#### **A. Comprehensive Economic Development Strategy (OMB Control No. 0610-0093)**

##### *I. Abstract*

A Comprehensive Economic Development Strategy (CEDS) is required to qualify for EDA investment assistance under its Public Works, Economic Adjustment, and most planning programs, and is a prerequisite for a region's designation by EDA as an Economic Development District (*see* 13 CFR 303, 305.2, and 307.2 of EDA's regulations). This collection of information is required to ensure that the recipient is complying with EDA's CEDS requirements.

##### *II. Method of Collection*

Paper report. Alternatively, EDA may approve an electronic submission.

##### *III. Data*

*Agency Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* EDA applicants for, and recipients of, Public Works, Economic Adjustment, and planning assistance, to include (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortia of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

*Estimated Number of Annual Responses:* 522 (14 initial CEDS, 74 revised CEDS, 371 updated CEDS performance reports, 62 CEDS for applicants for EDA assistance not located in EDA-funded planning district).

*Estimated Time Per Response:* 480 hours for the initial CEDS for a District Organization or other planning organization funded by EDA; 160 hours for the CEDS revision required at least

every 5 years from an EDA-funded District or other planning organization; 40 hours for the annual updated CEDS performance report required of EDA-funded District or other planning organizations; 40 hours per applicant for EDA Public Works or Economic Adjustment Assistance with a project deemed by EDA to 'merit further consideration' that is not located in an EDA-funded District.

*Estimated Total Annual Burden Hours:* 35,927.

*Estimated Total Annual Cost:* \$0.

#### **B. Requirements for Approved Construction Investments (OMB Control No. 0610-0096)**

##### *I. Abstract*

The *Summary of EDA Construction Standards* (commonly referred to as the "bluebook") and the *Standard Terms and Conditions for Construction Projects*, as well as any special conditions incorporated into the terms and conditions at the time of award, supplement the requirements that apply to EDA-funded construction projects. The information collected is used to monitor recipients' compliance with EDA's statutory and regulatory requirements and specific terms and conditions relating to individual awards. EDA also uses the information requested to analyze and evaluate program performance.

##### *II. Method of Collection*

Paper report. For some documents, EDA may approve electronic submissions.

##### *III. Data*

*Agency Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Current recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

*Estimated Number of Annual Responses:* 4,200 (600 open construction grants x an average of 7 responses/year).

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 8,400.

*Estimated Total Annual Cost:* \$0.

### C. Request To Amend an Investment Award and Project Service Maps (OMBControl No. 0610-0102)

#### I. Abstract

A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a) of EDA's regulations). EDA may require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see CFR 302.16(c) of EDA's regulations).

#### II. Method of Collection

Paper report.

#### III. Data

*Agency Form Number:* None.

*Type of Review:* Ad hoc submission (on an as-needed basis).

*Affected Public:* Current recipients of EDA assistance, to include (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortia of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; (6) Indian Tribes or a consortia of Indian Tribes; and (7) (for training, research, and technical assistance awards only) individuals and for-profit businesses.

*Estimated Number of Annual Responses:* 600 requests for amendments to construction awards, 30 requests for amendments to non-construction awards, 2 project service maps.

*Estimated Time Per Response:* 2 hours per request for an amendment to a construction award, 1 hour per request for an amendment to a non-construction award, 6 hours for a project service map.

*Estimated Total Annual Burden Hours:* 1,242.

*Estimated Total Annual Cost:* \$0.

### D. Property Management (OMB Control No. 0610-0103)

#### I. Abstract

A recipient must request, in writing, EDA's approval to undertake an incidental use of property acquired or improved with EDA investment assistance (see 13 CFR 314.3 of EDA's regulations). This collection of

information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. If a recipient wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA and disclose to EDA the intended future use of the real property or the tangible personal property for which the release is requested (see 13 CFR 314.10 of EDA's regulations). This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

#### II. Method of Collection

Paper Report. Alternatively, EDA may approve an electronic submission.

#### III. Data

*Agency Form Number:* None.

*Type of Review:* Ad hoc submission (only when a recipient makes a request).

*Affected Public:* Current or past recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

*Estimated Number of Annual Responses:* 54 incidental use requests; 96 for requests to release EDA's property interest.

*Estimated Time Per Response:* 45 minutes.

*Estimated Total Annual Burden Hours:* 113.

*Estimated Total Annual Cost:* \$0.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2009.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E9-1129 Filed 1-21-09; 8:45 am]

BILLING CODE 3510-34-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

#### Correction: Adopted Proposal for Available Alternative Site-Designation and Management Framework

The **Federal Register** notice published on January 12, 2009 (74 FR 1170-1173) describing the proposal adopted by the Foreign-Trade Zones Board for an Alternative Site-Designation and Management Framework is corrected as follows. For the element numbered as "9" in the description of the final proposal (regarding "sunset" limits on magnet and usage-driven sites), the third sentence of the paragraph should read as follows: "However, each grantee would have the option of proposing permanent FTZ designation for one magnet site and the FTZ Board could take a range of factors into account in determining the appropriate sunset period for a given site (e.g., nature of the site, public ownership of the site)."

Dated: January 14, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9-1113 Filed 1-21-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-601]

#### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On July 17, 2008, the Department of Commerce ("Department") published its preliminary results in the antidumping duty administrative review of tapered

roller bearings (“TRBs”) from the People’s Republic of China (“PRC”). The period of review (“POR”) for the administrative review is June 1, 2006, through May 31, 2007. In the administrative review, we have determined that Peer Bearing Company Changshan (“respondent” or “CPZ”) made sales in the United States at prices below normal value. We invited interested parties to comment on our preliminary results in these reviews. Based on our analysis of the comments we received in the administrative review, we made certain changes to our calculations for all mandatory respondents. The final dumping margins for this review are listed in the “Final Results Margins” section below.

**EFFECTIVE DATE:** January 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Demetri Kalogeropoulos or Brendan Quinn, 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) 482-2623 and (202) 482-5848, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published its preliminary results on July 17, 2008. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 41033 (July 17, 2008) (“*Preliminary Results*”).

We received comments from the Timken Company (“Petitioner”) and CPZ. Interested parties submitted case and rebuttal briefs on August 26, 2008, and September 5, 2008, respectively. On November 21, 2008, the Department extended the deadline for the final results of review to January 13, 2009. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Extension of Time Limit for Final Results of the 2006–2007 Administrative Review*, 73 FR 70619 (November 21, 2008). We invited parties to comment on the *Preliminary Results*. On December 9, 2008, the Department held a hearing with interested parties regarding issues raised in case and rebuttal briefs.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Antidumping and

Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, “*Tapered Roller Bearings from the People’s Republic of China: Issues and Decision Memorandum for the Final Results of the 2006–2007 Administrative Review*,” dated January 13, 2009, which is hereby adopted by this notice (“*Issues and Decision Memorandum*”). A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an Appendix. The *Issues and Decision Memorandum* is a public document and is on file in the Central Records Unit (“CRU”), Main Commerce Building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

**Period of Review**

The POR is June 1, 2006, through May 31, 2007.

**Scope of the Order**

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Changes Since the Preliminary Results**

Based on an analysis of the comments received, the Department has made certain changes in the margin calculations. For the final results, the Department has made the following changes:

- We have treated CPZ’s sale to the importer as the relevant sale for calculating dumping margins, and have calculated the margins on an export price basis (See Comment 1 and the memorandum titled “Peer Bearing Company Changshan, CPZ Final Results of Administrative Review: Program Analysis Memorandum, Tapered Roller Bearings and Parts Thereof,

Finished and Unfinished from the People’s Republic of China,” dated January 13, 2009 (“*Analysis Memorandum*”).

- We have granted byproduct offsets for CPZ’s sales of steel scrap (See Comment 2 and *Analysis Memorandum*).
- We are no longer using CPZ’s reported control number to match U.S. sales to factors of production data. Instead we are using CPZ’s reported product code (See Comment 3 and *Analysis Memorandum*).
- We have revised the surrogate value for roller steel scrap and cage steel scrap (See Comment 5 and the memorandum titled “Factors Valuations for the Final Results of the Administrative Review, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (“TRBs”) from the People’s Republic of China (“PRC”)” dated January 13, 2009 (“*FOP Memorandum*”).
- We have revised the international freight surrogate value to reflect CPZ’s shipping terms (See Comment 8 and *FOP Memorandum*).
- We have revised the unit weight for one of CPZ’s models (See Comment 9 and *Analysis Memorandum*).
- We have revised our calculation of inland freight for CPZ’s subcontractors (See Comment 10 and *Analysis Memorandum*).

The PRC-wide rate has also changed for the final results, from 60.95 percent to 92.84 percent. This rate represents the calculated rate for CPZ in these final results and is the highest calculated rate determined in the instant or any previous segment of this proceeding. We will apply the new PRC-wide rate of 92.84 percent to the PRC-wide entity (including Yantai Timken Company Limited (“Yantai Timken”)) for the final results. See “Use of Facts Otherwise Available” and “Selection of the PRC-Wide Rate” sections below. Corroboration of the new PRC-wide rate is not required because this rate is based on, and calculated from, information submitted by CPZ in the course of this administrative review, i.e., it is not secondary information. See 19 CFR 351.308(c) and (d) and section 776(c) of the Tariff Act of 1930, as amended (“the Act”).

**Use of Facts Otherwise Available**

In the *Preliminary Results*, the Department found that Yantai Timken did not demonstrate its entitlement to a separate rate, and thus is deemed to be part of the PRC-wide entity. See *Preliminary Results* at 73 FR 41035. As

the Department found that the PRC-wide entity, which includes Yantai Timken, failed to cooperate to the best of its ability in responding to the Department's requests for information and thereby impeded the Department's proceeding, the Department assigned the PRC-wide entity a rate based on adverse facts available ("AFA") pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act. *See Id.* The Department did not receive any comments regarding its preliminary application of AFA to the PRC-wide entity. Therefore, for these final results, the Department has not altered its analysis or its decision to apply total AFA to the PRC-wide entity.

### Selection of the PRC-Wide Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) the final determination; (3) a previous administrative review; or (4) other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. *See* the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994), at 870. For this review, we have used the highest rate on the record of any segment of the proceeding, *i.e.*, the final calculated rate for CPZ in this administrative review. *See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 37715 (July 11, 2007). Section 776(c) of the Act requires that, when the Department relies on secondary information rather than on information obtained in the course of a review as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act. *See* 19 CFR 351.308(d) and section 776(c) of the Act.

### Final Results Margins

We determine that the following weighted-average percentage margins exist for the POR:

### TRBS FROM THE PRC

Producer/Exporter	Weighted-Average Margin (Percent)
Peer Bearing Company Changshan (CPZ) .....	92.84
PRC-wide entity* .....	92.84

\*including Yantai Timken.

### Assessment Rates

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: 1) for the

exporters listed above, the cash deposit rate will be the rates shown for those companies; 2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; 3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and 4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

### Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing these final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 13, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

### Appendix I

*Comment 1:* Treatment of CPZ's U.S. Sales

*Comment 2:* Treatment of By-Product Offsets

*Comment 3:* Calculation of Normal Value Based on Control Number versus Model Number

*Comment 4:* Treatment of Forging Subcontractor's Factors of Production

*Comment 5:* Surrogate Value for Steel Scrap

*Comment 6:* Surrogate Value for Wire Rod

*Comment 7:* Surrogate Value for Steel Bar

*Comment 8:* Surrogate Value for International Freight

*Comment 9:* Calculation of Factors of Production for a Particular Model

*Comment 10:* Treatment of Inland Freight for Subcontractors

*Comment 11:* Treatment of Negative Dumping Margins ("Zeroing")

[FR Doc. E9-1219 Filed 1-21-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Affirmation of Vertical Datum for Surveying and Mapping Activities for Guam

**AGENCY:** National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

**ACTION:** Notice.

**SUMMARY:** This Notice announces a decision by the Federal Geographic Data Committee's Federal Geodetic Control Subcommittee, in accordance with the Office of Management and Budget, Circular A-16 (<http://www.whitehouse.gov/omb/circulars/a016/a016.html>), to affirm the Guam Vertical Datum of 2004 (GUVD 04) as the official civilian vertical datum for surveying and mapping activities for the island of Guam performed or financed by the Federal Government, and to the extent practicable, legally allowable and feasible, require that all Federal agencies, with the exception of those with specific military related applications, using or producing vertical height information undertake an orderly transition to GUVD 04.

**DATES:** Individuals or organizations wishing to submit comments on the

adoption of GUVD 04 as the official civilian vertical datum for Guam should do so by February 23, 2009.

**ADDRESSES:** Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, #8815, Silver Spring, Maryland 20910, fax 301-713-4324, or via e-mail [Dave.Doyle@noaa.gov](mailto:Dave.Doyle@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD 20910; *Phone:* (301) 713-3178.

**SUPPLEMENTARY INFORMATION:** The National Ocean Service (NOS), National Geodetic Survey (NGS), has completed the definition and implementation of GUVD 04. GUVD 04 supersedes all previously published height systems determined by all Federal surveying and mapping agencies, with the exception of those specifically related to tidal datums and/or military applications. GUVD 04 heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Spatial Reference System (NSRS) and are derived from approximately 132 km of 1st-Order, Class II geodetic leveling observations undertaken specifically for this project. The basis for all GUVD 04 heights is Mean Sea Level, for the National Tidal Datum Epoch 1983-2001, as determined by the NOS Center for Operational Oceanographic Products and Services (CO-OPS), and published for the National Water Levels Observation Network (NWLON) bench mark number 163 0000 TIDAL 4 (2.170 meters), located in Apra Harbor.

GUVD 04 height information for individual geodetic control monuments is available in digital form, from the NGS Web site: <http://www.ngs.noaa.gov/cgi-bin/datasheet.prl>.

Dated: December 30, 2008.

**David B. Zilkoski,**

*Director, National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E9-1182 Filed 1-21-09; 8:45 am]

BILLING CODE 3510-JE-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Affirmation of Vertical Datum for Surveying and Mapping Activities for the Islands of Rota, Saipan and Tinian of the Commonwealth of the Northern Mariana Islands (CNMI)

**AGENCY:** National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

**ACTION:** Notice.

**SUMMARY:** This Notice announces a decision by the Federal Geographic Data Committee's Federal Geodetic Control Subcommittee, in accordance with the Office of Management and Budget, Circular A-16 (<http://www.whitehouse.gov/omb/circulars/a016/a016.html>), to affirm the Northern Marianas Vertical Datum of 2003 (NMVD 03) as the official civilian vertical datum for surveying and mapping activities for the islands of Rota, Saipan and Tinian of the Commonwealth of the Northern Marianas, and to the extent practicable, legally allowable and feasible, require that all Federal agencies, with the exception of those with specific military related applications, using or producing vertical height information undertake an orderly transition to NMVD 03.

**DATES:** Individuals or organizations wishing to submit comments on the adoption of NMVD 03 as the official civilian vertical datum for the Northern Marianas, should do so by February 23, 2009.

**ADDRESSES:** Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, #8815, Silver Spring, Maryland 20910, fax 301-713-4324, or via e-mail [Dave.Doyle@noaa.gov](mailto:Dave.Doyle@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, #8815, Silver Spring, MD 20910; *Phone:* (301) 713-3178.

**SUPPLEMENTARY INFORMATION:** The National Ocean Service (NOS), National Geodetic Survey (NGS), has completed the definition and implementation of NMVD 03. NMVD 03 supersedes all previously published height systems determined by other Federal surveying and mapping agencies on Rota, Saipan and Tinian, with the exception of those specifically related to tidal datums and/or military applications. NMVD 03

heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Spatial Reference System (NSRS) and are derived from approximately 105 km of 1st-Order, Class II geodetic leveling observations (15 km on Rota, 60 km on Saipan and 15 km on Tinian) undertaken specifically for this project. The basis for all NMVD 03 heights is Mean Sea Level, for the epoch 1983–2001, as determined by the NOS Center for Operational Oceanographic Products and Services (CO-OPS), and published for the National Water Levels Observation Network (NWLON) bench mark number 163 3227 UH–2C (1.657 meters), located in Tanapag Harbor.

NMVD 03 height information for individual geodetic control monuments is available in digital form, from the NGS Web site: <http://www.ngs.noaa.gov/cgi-bin/datasheet.prl>.

Dated: December 30, 2008.

**David B. Zilkoski,**

*Director, National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E9–1180 Filed 1–21–09; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Affirmation of Vertical Datum for Surveying and Mapping Activities for the island of Tutuila, American Samoa

**AGENCY:** National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

**ACTION:** Notice.

**SUMMARY:** This Notice announces a decision by the Federal Geographic Data Committee's Federal Geodetic Control Subcommittee, in accordance with the Office of Management and Budget, Circular A–16 (<http://www.whitehouse.gov/omb/circulars/a016/a016.html>) to affirm the American Samoa Vertical Datum of 2002 (ASVD 02) as the official civilian vertical datum for surveying and mapping activities for the island of Tutuila, American Samoa performed or financed by the Federal Government and to the extent practicable, legally allowable and feasible, require that all Federal agencies, with the exception of those with specific military related applications, using or producing vertical height information undertake an orderly transition to ASVD 02.

**DATES:** Individuals or organizations wishing to submit comments on the

adoption of ASVD 02 as the official civilian vertical datum for Tutuila, American Samoa, should do so by February 23, 2009.

**ADDRESSES:** Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, Silver Spring, Maryland, 20910, fax 301–713–4324, or via e-mail [Dave.Doyle@noaa.gov](mailto:Dave.Doyle@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD, 20910; *Phone:* (301) 713–3178.

**SUPPLEMENTARY INFORMATION:** The National Ocean Service (NOS), National Geodetic Survey (NGS), has completed the definition and implementation of ASVD 02. ASVD 02 supersedes all previously published height systems determined by all Federal surveying and mapping agencies, with the exception of those specifically related to tidal datums and/or military applications for Tutuila. At this time, ASVD 02 does not apply to any of the other islands of American Samoa. ASVD 02 heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Spatial Reference System (NSRS) and includes 54 km of 1st-Order, Class II geodetic leveling observations undertaken specifically for this project. The basis for all ASVD 02 heights is Mean Sea Level, for the epoch 1983–2001, as determined by the NOS Center for Operational Oceanographic Products and Services (CO-OPS), and published for the National Water Levels Observation Network (NWLON) bench mark number 177 0000 S (1.364 meters), located in Pago Pago.

ASVD 02 height information for individual geodetic control monuments is available in digital form, from the NGS Web site: <http://www.ngs.noaa.gov/cgi-bin/datasheet.prl>.

Dated: December 30, 2008.

**David B. Zilkoski,**

*Director, National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E9–1181 Filed 1–21–09; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XM72

#### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Issuance of a scientific research permit.

**SUMMARY:** Notice is hereby given that NMFS has issued Permits 10093 and 10094 to the California Department of Fish and Game (CDFG), Region 1 and Region 3; respectively.

**ADDRESSES:** The application, permit, and related documents are available for review by appointment at: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 (ph: 707–575–6097, fax: 707–578–3435, e-mail at: [Jeffrey.Jahn@noaa.gov](mailto:Jeffrey.Jahn@noaa.gov)).

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Jahn at 707–575–6097, or e-mail: [Jeffrey.Jahn@noaa.gov](mailto:Jeffrey.Jahn@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

#### Species Covered in This Notice

This notice is relevant to federally threatened Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), endangered Central California Coast (CCC) coho salmon, threatened California Coastal (CC) Chinook salmon (*O. tshawytscha*), threatened Northern California (NC) steelhead (*O. mykiss*), threatened CCC steelhead, threatened South-Central California Coast (S-CCC) steelhead, and endangered Southern California (SC) steelhead.

**Permit Issued**

A notice of the receipt of an application for a scientific research permit (10093 and 10094) was published in the **Federal Register** on January 16, 2008 (73 FR 2900). Permits 10093 and 10094 were issued to CDFG Region 1 and Region 3 on September 23, 2008.

Permits 10093 and 10094 authorizes CDFG Region 1 and Region 3; respectively, intentional non-lethal take, and unintentional lethal take of the following ESA-listed salmonids: juvenile SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, S-CCC steelhead, and SC steelhead; adult CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead; and adult carcasses of SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead. The take activities associated with juvenile and adult ESA-listed salmonid studies include; capture (backpack electrofishing, beach seine, rotary screw trap, fish ladder trap, resistance board weir, flume-type-raceway/finger-weir-trap, hook and line and funnel/fyke trap), anesthetizing (optional), handling (identify, measure, and weigh), tissue sampling (fin-clip), scale sampling, marking (fin-clips and/or opercular-hole-punch), tagging (PIT and/or Floy tags) and release of fish. Take activities associated with adult ESA-listed salmonid carcass studies include; handling (identify, measure, and count), marking (opercular-hole-punch and/or cut-in-half), tagging (hog-ring), retaining (head; adipose clipped fish), scale sampling, tissue sampling (fin-clip), and release of fish.

Permits 10093 and 10094 authorizes unintentional lethal take of juvenile SONCC coho salmon, CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, S-CCC steelhead, and SC steelhead not to exceed 2.5 percent of fish captured. Permits 10093 and 10094 authorizes unintentional lethal take of adult CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, and S-CCC steelhead not to exceed 2 percent of fish captured.

Permits 10093 and 10094 are for research to be conducted in streams and estuaries throughout the State of California. The purpose of the research is to support conservation and recovery planning of ESA-listed salmonids, address information needs identified by CDFG Region 1 and Region 3, and contribute to the general body of scientific knowledge pertaining to ESA-

listed salmonids. Permits 10093 and 10094 expire on December 31, 2013.

Dated: January 14, 2009.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9-1121 Filed 1-21-09; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**RIN 0648-XM62**

**Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit**

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

**ACTION:** Notice; receipt of application for exempted fishing permit.

**SUMMARY:** This notice announces receipt of an exempted fishing permit (EFP) application from the North Pacific Fisheries Foundation. If granted, this permit would allow the applicant to collect approximately 100 Pacific halibut caught in the non-pelagic trawl gear fishery for flatfish to evaluate the accuracy of two models for predicting delayed mortality of individual trawl caught halibut. This activity has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act, and the Pacific Halibut Act by assessing techniques for improving survival of halibut in non-pelagic trawl fisheries and improving the accuracy of estimates of halibut mortality. Comments will be accepted at the February 4-10, 2009, North Pacific Fishery Management Council (Council) meeting in Seattle, WA.

**DATES:** Interested persons may comment on the EFP application during the Council's February 4-10, 2009, meeting in Seattle, WA.

**ADDRESSES:** The Council meeting will be held at the Renaissance Hotel, 515 Madison Street, Seattle, WA.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available by writing to the Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application also is available from the Alaska Region, NMFS website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442 or [jeff.hartman@noaa.gov](mailto:jeff.hartman@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Groundfish of the BSAI (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

NMFS has received an application for an EFP from the North Pacific Fisheries Foundation (NPF). Under this EFP, the NPF would evaluate methods for projecting survival of released halibut, which could improve NMFS's estimates of halibut mortality in the non-pelagic trawl gear fishery for flatfish and identify techniques for minimizing mortality of this species in trawl fisheries.

**Background**

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery only. Halibut caught incidentally in other fisheries, such as non-pelagic trawl fisheries, must be recorded and returned to the ocean as soon as possible. The North Pacific Fishery Management Council establishes a seasonal maximum biomass of halibut bycatch adjusted for the estimated halibut discard mortality factor for each non-halibut directed fishery. Fisheries close when they reach their seasonal mortality cap even if the catch of the target species is less than the seasonal quota for the directed

fishery. In the case of Bering Sea flatfish fisheries, seasons have been cut short by the halibut bycatch cap before the quotas have been reached. Accurately accounting for halibut in NMFS estimates of mortality and assuring that each halibut returned to the sea has the highest possible chance of survival are therefore high priorities for the IPHC's, the Council's, and NMFS's management goals for both halibut and groundfish.

Before halibut are discarded at-sea, the catch must first be estimated by at-sea observers. In order to credibly account for halibut catch and to ensure that the catch and discard of halibut is observed, NMFS prohibits any removal of halibut from a cod end, bin, or conveyance system prior to being observed and enumerated by an at-sea observer.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), allocation of halibut was modified for certain vessels, but halibut bycatch continued to limit fishing in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 mt of halibut bycatch mortality, but that allocation will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. In certain years, this amount is less than the sector's historic catch; therefore, finding ways to accurately estimate halibut survival is important for this sector.

This application for an EFP from NPF proposes to study two methods for predicting halibut survival. It would allow researchers onboard a catcher processor vessel to collect approximately 100 halibut caught with non-pelagic trawl gear and evaluate a reflex action mortality predictor (RAMP) for predicting delayed mortality in individual trawl-caught halibut. The RAMP method would be combined with and compared to the existing IPHC halibut mortality predictor currently used by observers. To assess and compare these two methods, halibut would be held in live tanks on a vessel and assessed by each method. The collection and holding of halibut in this manner requires an exemption from regulations that prohibit retention of halibut by trawl gear, and requiring that all halibut caught with this gear be released as soon as possible (§ 679.7(a)(12), and § 679.21(b)(2)(ii)).

This EFP would apply for the period of time required to complete the experiment during 2009, in areas open to directed fishing for flatfish. It would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used by

this vessel, or the amount or species of fish caught.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment as detailed in the categorical exclusion issued for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council will consider the EFP application during its February 4-10, 2009, meeting, which will be held at the Renaissance Hotel in Seattle, Washington. The applicant has been invited to appear in support of the application.

#### Public Comments

Interested persons may comment on the application at the February 2009 Council meeting during public testimony. Information regarding the meeting is available at the Council's website at <http://www.fakr.noaa.gov/npfmc/council.htm>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**).

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

Dated: January 15, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9-1184 Filed 1-21-09; 8:45 am]

**BILLING CODE 3510-22-S**

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09-C0003]

### Lasko Products Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Lasko Products Inc., containing a civil penalty of \$500,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 5, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09-C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7592.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: January 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

United States of America

Consumer Product Safety Commission

In the Matter of Lasko Products Inc., a corporation

[CPSC Docket No. 09-C0003]

#### Settlement Agreement

1. This Settlement Agreement ("Agreement") is made by and between the staff ("staff") of the U.S. Consumer Product Safety Commission ("Commission") and Lasko Products Inc. ("Lasko"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Agreement and the incorporated attached Order ("Order") resolve the staffs allegations set forth below.

#### The Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of the CPSA, 15 U.S.C. 2051-2089.

3. Lasko is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal corporate office located in West Chester, Pennsylvania.

4. At all times relevant herein, Lasko designed, manufactured and sold portable electric fans, including those that are the subject of the Agreement and Order.

#### Staff Allegations

5. Between 1999 and 2001, Lasko manufactured and distributed approximately 5.6 million of the subject portable electric fans under the following brand names and model numbers: Lasko 2135, 3300, 3400, 3410, 3510, 3515, 3521, 3550, 3700, 3723,

3733, 3750, 3800; Galaxy 3733; General Electric 106600, 106620, 106630; and Air King 9500, and 9515, (collectively, "fans" or "products"). The fans were sold from 2000 through 2004, by distributors and in retail stores nationwide, for between \$10 and \$25.

6. The fans are "consumer product(s)" and, at all times relevant herein, Lasko was a "manufacturer" of "consumer product(s)," which were "distributed in commerce" as those terms are defined or used in sections 3(a)(3), (5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(3), (5), (8), and (11).

7. The fans are defective because it is possible for an internal short to occur in the motor windings of some of the fans, which may cause the fans to overheat, smoke and/or catch fire, thereby presenting a substantial product hazard to consumers.

8. Between November 2002 and September 2005, Lasko received approximately forty two (42) reports of incidents involving certain fans overheating, smoking, melting or catching fire, which caused property damage and at least nine (9) personal injuries. Lasko filed its Initial Report on July 13, 2005 and filed its Full Report on September 2, 2005. The fans were recalled on February 8, 2006.

9. Although Lasko had obtained sufficient information to reasonably support the conclusion that the fans contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to do so, Lasko "knowingly" violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

10. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Lasko is subject to civil penalties for its failure to report as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

#### Response of Lasko

11. In the spring and early summer of 2005, Lasko received notice of a number of claims and/or received certain products for inspection that indicated a potential pattern of failure that had not been seen prior to that time.

12. The number and the nature of incidents or claims reported to Lasko prior to the summer of 2005 was insufficient to indicate any specific failure mode, pattern of failure or to reasonably support the conclusion that the fans contained a defect which could create a substantial product hazard, or

created an unreasonable risk of serious injury or death.

13. Lasko immediately commenced an investigation and provided the Commission with an Initial Report, in a timely manner, on July 13, 2005.

14. Lasko specifically denies that it failed to immediately inform the Commission of any defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). Lasko further denies that it in any way or "knowingly" violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

#### Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Lasko.

16. In settlement of the staff's allegations, Lasko agrees to pay a civil penalty of five hundred thousand dollars (\$500,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury and mailed to Cheryl Falvey, General Counsel, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

17. The parties enter the Agreement for settlement purposes only. The Agreement does not constitute an admission by Lasko or a determination by the Commission that Lasko violated the CPSA's reporting requirements.

18. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written requests not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Lasko knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Lasko failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v)

any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and Order.

21. The Agreement and Order shall apply to, and be binding upon Lasko and each of its successors and assigns.

22. The Commission's Order in this matter is issued under the provisions of the CPSA, and a violation of the Order may subject those referenced in paragraph 21 above to appropriate legal action.

23. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made apart from those contained in the Agreement and Order may not be used to vary or to contradict their terms.

24. The Agreement shall not be waived, amended, modified, or otherwise altered, without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced.

25. If, after the effective date hereof, any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Lasko agree that severing the provision materially affects the purpose of the Agreement and Order.

Lasko Products, Inc.

Dated: 12/11/08.

By: Bradford M. Brush, General Counsel, Lasko Products, Inc., 820 Lincoln Avenue, West Chester, PA 19380.

Dated: 12/10/08.

By: Neil A. Goldberg, Esquire, 665 Main Street, Suite 400, Buffalo, NY 14203, Counsel for Lasko Products, Inc.

#### U.S. Consumer Product Safety Commission

Cheryl Falvey,

*General Counsel.*

Ronald G. Yelenik,

*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: 12/16/08.

By: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel.

#### United States of America

#### Consumer Product Safety Commission

#### In the Matter of Lasko Products Inc.

[CPSC Docket No. 09–C0003]

#### Order

Upon consideration of the Settlement Agreement entered into between Lasko Products Inc. ("Lasko") and the U.S.

Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Lasko, and it appearing that the Settlement Agreement and Order are in the public interest, it is

*Ordered* that the Settlement Agreement be, and hereby is, accepted and it is

*Further ordered* that Lasko shall pay a civil penalty in the amount of five hundred thousand dollars (\$500,000.00), within twenty (20) calendar days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Lasko to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Lasko at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 9th day of January 2009.

By Order of the Commission.

**Todd A. Stevenson,**

*Secretary,*

*Consumer Product Safety Commission.*

[FR Doc. E9-755 Filed 1-21-09; 8:45 am]

**BILLING CODE 6355-01-M**

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF ENERGY

## ENVIRONMENTAL PROTECTION AGENCY

## NUCLEAR REGULATORY COMMISSION

[Docket No. EPA-HQ-OAR-2006-0957]

### Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual

*Correction*

In notice document E9-975 beginning on page 2998 in the issue of Friday, January 16, 2008, the docket number should read as set forth above.

[FR Doc. Z9-975 Filed 1-21-09; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DOD-2009-OS-0003]

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Defense Finance and Accounting Service is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective without further notice on February 23, 2009 unless comments are received which would result in a contrary determination.

**ADDRESSES:** Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft at (303) 589-3510.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7901a**

#### SYSTEM NAME:

Standard Negotiable Instrument Processing System (June 4, 2007, 72 FR 30786).

#### CHANGES:

\* \* \* \* \*

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or

information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury to provide information on check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system."

\* \* \* \* \*

#### SAFEGUARDS:

Delete entry and replace with "Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system."

#### RETENTION AND DISPOSAL:

Delete entry and replace with "Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing."

#### NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Written requests should contain individual's full name, Social Security Number (SSN), current address and telephone number."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to

information about themselves contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Written request should contain individual's full name, Social Security Number (SSN), current address and telephone number."

\* \* \* \* \*

#### T7901a

##### SYSTEM NAME:

Standard Negotiable Instrument Processing System.

##### SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center—Ogden, 7879 Wardleigh Road, Building 891, Hill Air Force Base, UT 84056-5997.

Defense Finance and Accounting Service—Indianapolis, 8899 E. 56th Street, Indianapolis, IN 46249-2700.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Army Active and Reserve military members.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home and mailing address, military branch of service, member's status, check payment information such as check numbers, and payee names.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R, Volume 5; 5 U.S.C. Sections 3512 and 3513 and E.O. 9397 (SSN).

##### PURPOSE(S):

A processing system, designed to process checks for U.S. Army Active and Reserve military members. As a management tool it will produce reports for reconciliation of these checks.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury to provide information on

check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices apply to this system.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

###### STORAGE:

Electronic storage media.

###### RETRIEVABILITY:

Name, Social Security Number (SSN), and check number.

###### SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

###### RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing.

###### SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, Systems Manager, 8899 East 56th Street, Indianapolis, IN 46249-2700.

###### NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Written requests should contain individual's full name, Social Security

Number (SSN), current address, and telephone number.

##### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-1050.

Written request should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

##### CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279-8000.

##### RECORD SOURCE CATEGORIES:

The individual, DFAS Defense Joint Military Payroll System, and the U.S. Army active and reserve members.

##### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9-1224 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD-2009-OS-0005]

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Finance and Accounting Service proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552(a)), as amended. The alterations add new locations, new category of individuals, new category of records and other administrative changes to the system notice.

**DATES:** This action will be effective without further notice on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to Ms. Linda Krabbenhoft, Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Krabbenhoft, at (303) 589-3510.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service's record system notices for record systems subject to the Privacy Act of 1974 (5 U.S.C. 552(a)), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 13, 2009, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### T3020

#### SYSTEM NAME:

Living Disaster Recovery Planning System (LDRPS) (August 18, 2006, 71 FR 47780).

#### CHANGES:

\* \* \* \* \*

#### SYSTEM LOCATION:

Delete entry and replace with "Defense Finance and Accounting Service-Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249-1460. (Physical location of database and server.)

Defense Finance and Accounting Service-Columbus, 3990 East Broad Street, Columbus, OH 43218-2317.

Defense Finance and Accounting Service-Cleveland, 1240 East 9th Street, Cleveland, OH 44199-2056.

Defense Finance and Accounting Service-Arlington, 1851 South Bell Street, Crystal Mall #3, Arlington, VA 22240-5291.

Defense Finance and Accounting Service-Limestone, 27 Arkansas Road, Limestone, ME 04751-1500.

Defense Finance and Accounting Service-Japan, Building 206, Unit 5220, APO AP 96328-5220.

Defense Finance and Accounting Service-Europe, Unit #23122, APO AE 09227.

Defense Finance and Accounting Service-TSO Patuxent River, 22299 Exploration Park Drive, Lexington Park, MD 20653-2051.

Defense Finance and Accounting Service-TSO Pensacola, 250 Raby Avenue, Pensacola, FL 32509-5122.

Defense Finance and Accounting Service-Rome, 325 Brooks Road, Rome, NY 13441-4527.

Defense Finance and Accounting Service, DFAS-Texarkana, PO BOX 611, Texarkana, Texas 75505-6111."

\* \* \* \* \*

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, organization(s), DFAS organization element, assignment, employee ID, current work address, office and home telephone number(s), grade/rank, military branch of service, position title, job series, disability information and emergency point-of-contact name and telephone numbers."

\* \* \* \* \*

#### AUTHORITY:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; DFAS Regulation 3020.26, Corporate Contingency Plan; DoDD 1400.31, Mobilization Management of the DoD Civilian Work Force; DoDI 1400.32, DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures; DoDI 3020.37, Continuation of Essential DoD Contractor Services During Crises and E.O. 12656, Assignment of Emergency Preparedness Responsibilities."

\* \* \* \* \*

#### STORAGE:

Delete entry and replace with "Paper Records and electronic storage media."

\* \* \* \* \*

#### SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically."

#### RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed within 180 days

after the recordkeeping copy has been produced or destroyed/deleted when dissemination, revision, or updating is completed. Records are destroyed by burning, shredding, or pulping hard copy records and degaussing electronic media."

\* \* \* \* \*

#### NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the FOIA/PA Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Individual should furnish full name, current DFAS organization element, current work address and work telephone number."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves in this system of records should address written inquiries to the FOIA/PA Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Individual should furnish full name, current DFAS organization element, current work address and work telephone number."

\* \* \* \* \*

#### CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150."

\* \* \* \* \*

### T3020

#### SYSTEM NAME:

Living Disaster Recovery Planning System Records.

#### SYSTEM LOCATION:

Defense Finance and Accounting Service-Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249-1460. (Physical location of database and server.)

Defense Finance and Accounting Service-Columbus, 3990 East Broad Street, Columbus, OH 43218-2317.

Defense Finance and Accounting Service-Cleveland, 1240 East 9th Street, Cleveland, OH 44199-2056.

Defense Finance and Accounting Service-Arlington, 1851 South Bell Street, Crystal Mall #3, Arlington, VA 22240-5291.

Defense Finance and Accounting Service-Limestone, 27 Arkansas Road, Limestone, ME 04751-1500.

Defense Finance and Accounting Service-Japan, Building 206, Unit 5220, APO AP 96328-5220.

Defense Finance and Accounting Service-Europe, Unit #23122, APO AE 09227.

Defense Finance and Accounting Service-TSO Patuxent River, 22299 Exploration Park Drive, Lexington Park, MD 20653-2051.

Defense Finance and Accounting Service-TSO Pensacola, 250 Raby Avenue, Pensacola, FL 32509-5122.

Defense Finance and Accounting Service-Rome, 325 Brooks Road, Rome, NY 13441-4527.

Defense Finance and Accounting Service, DFAS-Texarkana, PO BOX 611, Texarkana, Texas 75505-6111.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All civilian and military individuals employed by the Defense Finance and Accounting Service; may also include civilian and military personnel of the Department of Defense and other Government agencies; may also include family members and other emergency points-of-contact and contractor organizations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, organization(s), DFAS organization element, assignment, employee ID, current work address, office and home telephone number(s), grade/rank, military branch of service, position title, job series, disability information and emergency point-of-contact name and telephone numbers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; DFAS Regulation 3020.26, Corporate Contingency Plan; DoDD 1400.31, Mobilization Management of the DoD Civilian Work Force; DoDI 1400.32, DoD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures; DoDI 3020.37, Continuation of Essential DoD Contractor Services During Crises and E.O. 12656, Assignment of Emergency Preparedness Responsibilities.

**PURPOSE(S):**

To provide DFAS with a standardized automated contingency planning process. Personal information in the system is used to publish organizational telephone directories/locators, recall personnel to place of duty when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions during an emergency/disaster.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments or civic organizations during actual emergencies, exercises, or continuity of operation tests for the purpose of responding to emergency situations.

The DoD "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper Records and electronic storage media.

**RETRIEVABILITY:**

Retrieved by individual's name, by organization and by employee ID (which is a combination of individual's first and last name).

**SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

**RETENTION AND DISPOSAL:**

Records are destroyed within 180 days after the recordkeeping copy has been produced or destroyed/deleted when dissemination, revision, or updating is completed. Records are destroyed by burning, shredding, or pulping hard copy records and degaussing electronic media.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Contingency Planning Division, Defense Finance and Accounting Service-Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249-1460.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the FOIA/PA Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Individual should furnish full name, current DFAS organization element, current work address and work telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves in this system of records should address written inquiries to the FOIA/PA Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Individual should furnish full name, current DFAS organization element, current work address and work telephone number.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

**RECORD SOURCE CATEGORIES:**

Information is obtained from record subject.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1228 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[Docket ID DOD-2009-OS-0002]

**Privacy Act of 1974; System of Records**

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Defense Logistics Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 23, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *Attn:* DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### 350.05

#### SYSTEM NAME:

Official Personnel Files for Non-Appropriated Fund Employees (February 21, 2002, 67 FR 8012).

#### CHANGES:

\* \* \* \* \*

#### NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain subject individual's full name, Social Security Number and location of organization and physical location where employed."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained

in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain subject individual's full name, Social Security Number and location of organization and physical location where employed."

#### CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221."

\* \* \* \* \*

### S400.05

#### SYSTEM NAME:

Official Personnel Files for Non-Appropriated Fund Employees.

#### SYSTEM LOCATION:

Non-Appropriated Fund Personnel Office, Headquarters, Defense Logistics Agency, *Attn:* DES-Q, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

NAF Personnel Offices of the following Defense Logistics Agency Field Activities:

a. Defense Distribution Depot Susquehanna, *Attn:* DDSP-HM, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002;

b. Defense Supply Center Richmond, *Attn:* DSCR-H, 8000 Jefferson Davis Highway, Richmond, VA 23297-5131;

c. Defense Supply Center Columbus, *Attn:* DSCC-WLQ, 3990 East Broad Street, Columbus, OH 43216-5000;

d. Defense Logistics Information Service, *Attn:* DLIS-RB, 74 N. Washington Avenue, Battle Creek, MI 49017-3084; and

e. Defense Distribution Depot San Joaquin, *Attn:* DDJC-X, 25600 S. Chrisman Road, Building 100, Room 28, Tracy, CA 95376.

**Note:** Some of the information contained in this system may be duplicated for maintenance at a location closer to the employee's work site (e.g., in an administrative office or supervisor's work folder) and still be covered by this system of records notice.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have accepted employment as a DLA Non-Appropriated Fund employee.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The system constitutes a history of employment with DLA and contains name, physical and electronic addresses, telephone numbers, date and place of birth, citizenship, Social Security Number, prior employment or work history, and employment application forms. In addition, the system includes grade; series; duties; duty location; promotions; work schedule; health and life insurance election documents; pay data; direct deposit forms; savings bond authorizations; state and local taxation forms; emergency notification data; performance objectives and evaluations; awards; notices of disciplinary or adverse action and employee response; training records; certification and licensing records; medical and fitness for duty evaluations; secondary employment documents; the fact of and level of security clearance; social security or other retirement benefit data; and similar employment-related material.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1143d, Employment assistance; 10 U.S.C. 1588, Voluntary services; 10 U.S.C. 1784, Employment opportunities; 42 U.S.C. 300e-9, Employees Health Benefit Plans; 42 U.S.C. Chapter 7, Subchapter II, Social Security Benefits and E.O. 9397 (SSN).

#### PURPOSE(S):

The files provide the basic source of factual data about a person's Non-Appropriated Fund employment. The information is collected and maintained to provide personnel services to the employee and to provide personnel and supervisory officials with information on which to base decisions on employee rights, benefits, eligibility and status.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be disclosed to government and private vendor training facilities and educational institutions in support of training requirements; to health and life insurance carriers for enrollment or claim processing purposes; and to Federal, state, local,

and professional licensing boards concerning the issuance, retention, or revocation of licenses or certificates.

To Federal, State, or local agencies that verify eligibility for, administer, audit, or adjudicate claims pertaining to retirement, insurance, unemployment, health benefits, occupational injury, and similar entitlement programs.

To public and private organizations for nominating, considering, or selecting employees for awards and honors or to publicize employee recognition programs.

To the Equal Employment Opportunity Commission (EEOC) for investigating alleged or possible discrimination practices or to fulfill other functions vested in the EEOC.

To the Federal Labor Relations Authority (FLRA) for investigating and resolving allegations of unfair labor practices, or to fulfill other functions vested in the FLRA.

To public health agencies in cases where employees have contracted or been exposed to a health hazard while employed with DLA.

To the Department of the Treasury to process savings bond authorization forms.

To the Social Security Administration and pension fund administration entities for retirement and pension benefit administration, oversight, and audit purposes.

The DOD "Blanket Routine Uses" also apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on paper and on electronic storage media.

**RETRIEVABILITY:**

Records are retrieved by subject individual's name or Social Security Number.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA personnel who must have access to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, locked cabinets or powered down computer terminals during non-duty hours. Output and storage media products are labeled "For Official Use Only" and handled in accordance with DLA regulations for the safeguarding of such information. Data relayed through the Internet is encrypted during transmission by means that comply with DOD polices and technical

specifications for communications, operations, and web security.

**RETENTION AND DISPOSAL:**

Folders are maintained for the duration of the employee's employment. They are retired to the National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118, 30 days after separation except that files on off-duty military personnel are destroyed 2 years after termination of employment and files on non-U.S. citizens residing outside of CONUS, Alaska, Hawaii, but working within CONUS, Alaska, and Hawaii are destroyed 3 years after separation.

Some records within the file are retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules.

a. Documents relating to the administration of group life, health, and accident insurance programs, and retirement plans for NAF employees. Included are requests for group insurance, agreements, waivers, requests for discontinuance, applications for insurance, beneficiary designations, notices of employment termination, statements of contributions, similar documents, and related papers are destroyed after termination of involvement by the NAF activity.

b. Documents reflecting basic data on individual employees such as veteran preference, service computation date, performance ratings, positions held, and similar information are destroyed 15 years after transfer or separation of employee.

c. Documents related to submitting, evaluating, and approving or disapproving suggestions, service awards, and commendations of non-appropriated fund employees are destroyed 5 years after final action.

d. Documents used to record supervisory counseling interviews and separation interviews are destroyed 6 months after transfer or separation of employee.

e. Training documents are destroyed after 5 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, NAF Personnel and Policy Office, Headquarters, Defense Logistics Agency, *Attn:* DES-Q, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the

Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain subject individual's full name, Social Security Number and location of organization and physical location where employed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain subject individual's full name, Social Security Number and location of organization and physical location where employed.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

**RECORD SOURCE CATEGORIES:**

Information contained in the folder is obtained from the record subject, the employee's previous employer, educational institutions, trade associations, references and others who would have knowledge of the employee's skills or employment characteristics and papers originating with the activity during the employee's work history.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1233 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[Docket ID DOD-2009-OS-0004]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense is altering system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 23, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cindy Allard at (703) 588-2386.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the *Federal Register* and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on January 12, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 13, 2009.

**Morgan E. Frazier,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### DMDC 02 DoD

##### SYSTEM NAME:

Defense Enrollment Eligibility Reporting System (DEERS) (June 5, 2008, 73 FR 31999).

##### CHANGES:

\* \* \* \* \*

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Computer files containing beneficiary's name, Service or Social Security Number (SSN), enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, disability documentation; wounded, ill and injured identification information; Medicare eligibility and enrollment data, primary and secondary

fingerprints and photographs of beneficiaries, blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; Department of Veterans Affairs disability payment records; digital signatures where appropriate to assert validity of data; e-mail (home/work); emergency contact information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proofing identity and association; workforces information (e.g., Acquisition, First Responders); Privacy Act audit logs."

\* \* \* \* \*

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in

turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Income Security Programs wounded military service members and veterans for the purpose of expediting disability processing.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment eligibility.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. NOTE: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. NOTE: Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For the purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel and pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the

purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of: (1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C, Chapter 1607), the National Call to Service enlistment educational benefit (Title 10, Chapter 510), the Post 9/11 GI Bill (Title 38 U.S.C., Chapter 33) and the transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from

any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95-452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, State and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or

policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and State agencies to validate demographic data (e.g., Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108-136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and email addresses for the purpose of notifying the military

members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To the Office of Personnel Management (OPM):

To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing to OPM all reserve military members eligible for TRICARE Reserve Select (TRS) to be matched against the OPM Central Personnel Data File (OPM/GOVT-1) for providing those reserve military members that are also Federal civil service employees. This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10)."

\* \* \* \* \*

#### **DMDC 02 DoD**

##### **SYSTEM NAME:**

Defense Enrollment Eligibility Reporting System (DEERS)

##### **SYSTEM LOCATION:**

EDS—Service Management Center, 1075 West Entrance Drive, Auburn Hills, MI 48326-2723.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty members and other Uniformed Servicemembers, i.e. Department of Defense (DoD), Coast Guard, NOAA and USPHS; Reserve Members; National Guard members; State National Guard Employees; Presidential appointees of all Federal Government agencies; DoD and Uniformed Service civil service employees, except Presidential appointees; Disabled American veterans; DoD and Uniformed Service contract employees; Former members (Reserve service, discharged RR or SR following notification of retirement eligibility); Medal of Honor recipients; Non-DoD civil service employees; U.S. Military Academy Students; Non-appropriated fund DoD and Uniformed Service employees (NAF); Non-Federal Agency Civilian associates, i.e. American Red Cross Emergency Services paid employees, Non-DoD contract employees; Reserve retirees not yet eligible for retired pay; Retired

military members eligible for retired pay; Foreign Affiliates; DoD OCONUS Hires; DoD Beneficiaries; Civilian Retirees; Dependents; Members of the general public treated for a medical emergency in a DoD Medical Facility; Emergency Contact Person; Care Givers; Prior Military Eligible for VA benefits.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Computer files containing beneficiary's name, Service or Social Security Number (SSN), enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, disability documentation; wounded, ill and injured identification information; Medicare eligibility and enrollment data, primary and secondary fingerprints and photographs of beneficiaries, blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; Department of Veterans Affairs disability payment records; digital signatures where appropriate to assert validity of data; email (home/work); emergency contact information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment

information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proving identity and association; workforces information (e.g. Acquisition, First Responders); Privacy Act audit logs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; 5 U.S.C. App. 3 (Pub. L. 95-452, as amended (Inspector General Act of 1978)); Pub. L. 106-265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; 42 U.S.C., Chapter 20, Subchapter I-G, Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office, Sec. 1973ff, Federal responsibilities; DoD Directive 1000.4, Federal Voting Assistance Program (FVAP); Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection, Servicemembers' Group Life Insurance and Veterans' Group Life Insurance and E.O. 9397 (SSN).

**PURPOSE(S):**

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards, i.e. Common Access Cards (CAC) or beneficiary cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

To authenticate and identify DoD affiliated personnel (e.g., contractors); to assess manpower, support personnel and readiness functions; to perform statistical analyses; identify current DoD civilian and military personnel for purposes of detecting fraud and abuse of benefit programs; to register current DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are entitled; to ensure benefit eligibility is retained after separation from the military; information will be used by agency

officials and employees, or authorized contractors, and other DoD Components for personnel and manpower studies; and to assist in recruiting prior-service personnel.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Income Security Programs wounded military service members and veterans for the purpose of expediting disability processing.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment eligibility.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of

identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. NOTE: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. NOTE: Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For the purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account

for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel and pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/ Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to correct any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of

determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C., Chapter 1607), the National Call to Service enlistment educational benefit (Title 10, Chapter 510), the Post 9/11 GI Bill (Title 38 U.S.C., Chapter 33) and the transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over

payments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95-452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel

so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and state agencies to validate demographic data (e.g., Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108-136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and e-mail addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To the Office of Personnel Management:

To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing to OPM all reserve military members eligible for TRICARE Reserve Select (TRS) to matched against the OPM Central Personnel Data File (OPM/GOVT-1) for providing those reserve military members that are also Federal civil service employees. This disclosure by OPM will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

**RETRIEVABILITY:**

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic

characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

**SAFEGUARDS:**

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically. All individuals granted access to this system of records is to have received Information Assurance and Privacy Act training.

**RETENTION AND DISPOSAL:**

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

Individuals should provide the name and number of this system of records notice so that your request can be tasked to the appropriate OSD/JS office. This section must also include a description of needed identifier so that the record may be retrieved.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester

Service Center, Office of the Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

Individuals should provide the name and number of this system of records notice so that your request can be tasked to the appropriate OSD/JS office. This section must also include a description of needed identifier so that the record may be retrieved.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**RECORD SOURCE CATEGORIES:**

Individuals, personnel, pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration, Department of Veterans Affairs, and other Federal agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1237 Filed 1-21-09; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[Docket ID DoD-2009-OS-0007]

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 23, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, *Attn:* DP,

8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on January 13, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **S500.20 DLA-I**

##### **SYSTEM NAME:**

Criminal Incidents/Investigations File (February 22, 1993, 58 FR 10854).

##### **CHANGES:**

##### **SYSTEM IDENTIFIER:**

Delete "DLA-I" from entry.

##### **SYSTEM NAME:**

Delete entry and replace with "Defense Logistics Agency Criminal Incident Reporting System Records."

##### **SYSTEM LOCATION:**

Delete entry and replace with "Enterprise Data Center East, 8180 Green Meadows Drive, Lewis Center, OH 43035-9605. Records may also be maintained within the DLA Offices that use these records in the performance of their official duties located at Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221 and the DLA Field Activities."

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Civilian and military personnel of DLA, contractor employees, and other persons who have committed or are suspected of having committed, any criminal act (felony or misdemeanor) or any violations of laws, regulations, or ethical standards on DLA controlled

activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest. Individuals or companies who purchase or seek to purchase excess or surplus personal property from the Department of Defense (DOD) where that property is either U.S. Mention List or Commerce Control List property."

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Individual's name, address and telephone number, Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies."

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "The Omnibus Crime Control Act of 1994; Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Congress); DOD Directive 5105.22, Defense Logistics Agency (32 CFR part 359); DOD Directive 5105.42, Defense Security Service (32 CFR part 361); DOD Directive 7730.47, Defense Incident-Based Reporting System; DOD Instruction 2030.8, Trade Security Controls on DOD Excess and Surplus Personal Property; DOD Instruction 5240.4, Reporting of Counterintelligence and Criminal Violations; DOD Instruction 5505.2, Criminal Investigations of Fraud Offenses; 28 U.S.C. 534, Uniform Federal Crime Reporting Act; 18 U.S.C. 922, Brady Handgun Violence Prevention Act of 1994; 42 U.S.C. 10601, Victim Rights and Restitution Act of 1990; 10 U.S.C. 1562, Database on Domestic Violence Incidents; and E.O. 9397 (SSN)."

##### **PURPOSE(S):**

Delete entry and replace with "Information in this system is used by DLA Office of Investigations, DLA Offices of Public Safety, and the DLA Office of General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and criminal investigative support for the future. The DLA General Counsel also uses data to review cases,

determine proper legal action, and coordinate on all available remedies. Information is released to DLA managers who use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees or contractors in cases of their involvement. Records are also used by DLA to monitor the progress of investigations, identify crime conducive conditions, and prepare crime vulnerability assessments/statistics."

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the investigation, for corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of an investigation.

To DLA contractors or vendors when the investigation pertains to a person they employ or to a product or service they provide to DOD when disclosure is necessary to accomplish or support corrective action.

The DoD 'Blanket Routine Uses' also apply to this system of records."

\* \* \* \* \*

##### **STORAGE:**

Delete entry and replace with "Paper records and electronic storage media."

\* \* \* \* \*

##### **SAFEGUARDS:**

Delete entry and replace with "Physical entry is restricted by the use of guards, locks, and administrative procedures. Computer terminals are password controlled with system-generated, forced password-change protocols or also equipped with 'Smart Card' technology that requires the insertion of an embedded identification card and entry of a personal identification number (PIN). In addition, computer screens lock after a preset period of inactivity with re-entry controlled by passwording. DCIRS is also password controlled. Access to the database is limited to those DLA personnel who require the records in the performance of their official duties. Employees are periodically briefed on their responsibilities regarding privacy

information. All individuals granted access to DCIRS is to have taken Information Assurance and Privacy Act training. Records and computerized files are maintained in areas accessible only to the DLA OI, DLA Offices of Public Safety, and the DLA General Counsel personnel."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Staff Director, DLA Office of Investigations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060-6221."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security

Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Responses to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Director's Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies."

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete entry and replace with "Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3)(c) and (e) and is published at 32 CFR part 323. For more information contact the system manager."

\* \* \* \* \*

**S500.20**

**SYSTEM NAME:**

Defense Logistics Agency Criminal Incident Reporting System Records.

**SYSTEM LOCATION:**

Enterprise Data Center East, 8180 Green Meadows Drive, Lewis Center, OH 43035-9605. Records may also be maintained within the DLA Offices that use these records in the performance of their official duties located at Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221 and the DLA Field Activities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian and military personnel of DLA, contractor employees, and other persons who have committed or are suspected of having committed, any criminal act (felony or misdemeanor) or any violations of laws, regulations, or ethical standards on DLA controlled activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest. Individuals or companies who purchase or seek to purchase excess or surplus personal property from the Department of Defense (DOD) where that property is either U.S. Mention List or Commerce Control List property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, address and telephone number, Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Director's Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Omnibus Crime Control Act of 1994; Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Congress); DOD Directive 5105.22, Defense Logistics Agency (32 CFR part 359); DOD Directive 5105.42, Defense Security Service (32 CFR part 361); DOD Directive 7730.47, Defense Incident-Based Reporting System; DOD Instruction 2030.8, Trade Security Controls on DOD Excess and Surplus Personal Property; DOD Instruction 5240.4, Reporting of Counterintelligence and Criminal Violations; DOD Instruction 5505.2, Criminal Investigations of Fraud Offenses; 28 U.S.C. 534, Uniform Federal Crime Reporting Act; 18 U.S.C. 922, Brady Handgun Violence Prevention Act of 1994; 42 U.S.C. 10601, Victim Rights and Restitution Act of 1990; 10 U.S.C. 1562, Database on Domestic Violence Incidents; and E.O. 9397 (SSN).

**PURPOSE(S):**

Information in this system is used by DLA Office of Investigations, DLA Offices of Public Safety, and the DLA Office of General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and criminal investigative support for the future. DLA General Counsel also uses data to review cases, determine proper legal action, and coordinate on all available remedies. Information is released to DLA managers who use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees or contractors in cases of their involvement. Records are also used by DLA to monitor the progress of investigations, identify crime conducive conditions, and prepare crime vulnerability assessments/statistics.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the investigation, for corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of an investigation.

To DLA contractors or vendors when the investigation pertains to a person they employ or to a product or service they provide to DOD when disclosure is necessary to accomplish or support corrective action.

The DOD "Blanket Routine Uses" also apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records and electronic storage media.

**RETRIEVABILITY:**

Hardcopy records filed chronologically by DLA case number and cross-indexed to individual or file name. Automated records are retrievable by name of the individual or firm, DLA case number, DLA Field Activity number or activity code, or keyword.

**SAFEGUARDS:**

Physical entry is restricted by the use of guards, locks, and administrative procedures. Computer terminals are password controlled with system-generated, forced password-change protocols or also equipped with "Smart Card" technology that requires the insertion of an embedded identification card and entry of a personal identification number (PIN). In addition, computer screens lock after a preset period of inactivity with re-entry controlled by passwording. DCIRS is also password controlled. Access to the database is limited to those DLA personnel who require the records in the performance of their official duties. Employees are periodically briefed on their responsibilities regarding privacy information. All individuals granted access to DCIRS is to have taken Information Assurance and Privacy Act training. Records and computerized files are maintained in areas accessible only to the DLA OI, DLA Offices of Public

Safety, and the DLA General Counsel personnel.

**RETENTION AND DISPOSAL:**

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Staff Director, DLA Office of Investigations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2358, Fort Belvoir, VA 22060-6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**RECORD SOURCE CATEGORIES:**

Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Director's Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers, by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3)(c) and (e) and is published at 32 CFR part 323. For more information contact the system manager.

[FR Doc. E9-1239 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Docket ID DoD-2009-OS-0009]

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice To Alter a System of Records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on February 23, 2009, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on January 13, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated

February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S180.30 DSCR**

**SYSTEM NAME:**

FOIA and Privacy Act Request Tracking System (November 16, 2004, 69 FR 67112).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with "S510.30."

**SYSTEM NAME:**

Delete entry and replace with "Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records."

**SYSTEM LOCATION:**

Delete entry and replace with "Freedom of Information Act/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221 and the FOIA/PA Offices of the DLA Field Activities. Mailing addresses for the DLA Field Activities may be obtained from the System manager."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests, or FOIA/PA administrative appeals; individuals whose requests and/or records have been referred to the Defense Logistics Agency by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, or individuals who are the subjects of such requests and appeals."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals and includes the original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 5

U.S.C. 552, Freedom of Information Act; and 5 U.S.C. 552a, The Privacy Act of 1974 (as amended)."

**PURPOSE(S):**

Delete entry and replace with "This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the Defense Logistics Agency in carrying out any other responsibilities under the FOIA and the Privacy Act."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph as follows: "Information from this system may be provided to other Federal, state, and local agencies when it is necessary to coordinate responses or denials."

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with "Records may be stored on paper and/or on electronic media."

**RETRIEVABILITY:**

Delete entry and replace with "Records are retrieved by the name of the requester or appellant; the number assigned to the request or appeal; and in some instances may be retrieved by the name of the attorney representing the requester or appellant, or the name of an individual who is the subject of such a request or appeal."

**SAFEGUARDS:**

Delete entry and replace with "Information in this system is safeguarded in accordance with applicable laws, rules, and policies. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties. Access is further restricted by the use of a two-factor authentication process (common access card and registered login name). Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases."

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Freedom of Information Act Requests—Full disclosure files are destroyed 2 years after date of reply; FOIA request denial files are destroyed

after 6 years if not appealed; FOIA appeal files are destroyed 6 years after final determination by agency, or 6 years after the time at which a requester could file suit, or 3 years after adjudication by courts, whichever is later.

Privacy Act Requests—Requests totally granted are destroyed 2 years after date of reply; requests totally or partially denied and not appealed are destroyed 5 years after date of reply; requests totally or partially denied and appealed are destroyed 4 years after final determination by agency or 3 years after final adjudication by courts, whichever is later."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Chief Privacy and FOIA Officer, FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Activity to which the initial request was addressed and/or directed or you may submit your request to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221."

Inquiry should contain the requester's full name, individual's full name who is the subject of the record if different from the requester, current address, telephone number, a description of the records sought, and correspondence tracking number, if known."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves under the Privacy Act contained in this system should address written inquiries to the DLA Activity to which the initial request was addressed and/or directed or you may submit your request to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221."

Inquiry should contain the requester's full name, individual's full name who is the subject of the record if different from the requester, current address, telephone number, a description of the records sought, and correspondence tracking number, if known."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records, for contesting contents,\* and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221."

\* Some information may be exempt from contesting record procedures.

\* \* \* \* \*

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete entry and replace with "During the course of a FOIA/Privacy Act action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, Defense Logistics Agency hereby claims the same exemptions for the records as claimed in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 323. For additional information contact the System manager."

\* \* \* \* \*

**S510.30****SYSTEM NAME:**

Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

**SYSTEM LOCATION:**

Freedom of Information Act/Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221 and the FOIA/PA Offices of the DLA Field Activities. Mailing addresses for the DLA Field Activities may be obtained from the System manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who submit Freedom of Information Act (FOIA) and Privacy Act (PA) requests, or FOIA/PA administrative appeals; individuals whose requests and/or records have been referred to the Defense Logistics Agency by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, or

individuals who are the subjects of such requests and appeals.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records created or compiled in response to FOIA and Privacy Act requests and administrative appeals and includes the original requests and administrative appeals; responses to such requests and administrative appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and, in some instances, copies of requested records and records under administrative appeal.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552, Freedom of Information Act; and 5 U.S.C. 552a, The Privacy Act of 1974 (as amended).

**PURPOSE(S):**

This system is maintained for the purpose of processing access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the Defense Logistics Agency in carrying out any other responsibilities under the FOIA and the Privacy Act.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be provided to other Federal, state, and local agencies when it is necessary to coordinate responses or denials.

The DoD "Blanket Routine Uses" apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Records may be stored on paper and/or on electronic media.

**RETRIEVABILITY:**

Records are retrieved by the name of the requester or appellant; the number assigned to the request or appeal; and in some instances may be retrieved by the name of the attorney representing the requester or appellant, or the name of an individual who is the subject of such a request or appeal.

**SAFEGUARDS:**

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties. Access is further restricted by the use of a two-factor authentication process (Common Access Card and registered login name). Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases.

**RETENTION AND DISPOSAL:**

Freedom of Information Act Requests—Full disclosure files are destroyed 2 years after date of reply; FOIA request denial files are destroyed after 6 years if not appealed; FOIA appeal files are destroyed 6 years after final determination by agency, or 6 years after the time at which a requester could file suit, or 3 years after adjudication by courts, whichever is later.

Privacy Act Requests—Requests totally granted are destroyed 2 years after date of reply; requests totally or partially denied and not appealed are destroyed 5 years after date of reply; requests totally or partially denied and appealed are destroyed 4 years after final determination by agency or 3 years after final adjudication by courts, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Privacy and FOIA Officer, FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the DLA Activity to which the initial request was addressed and/or directed or you may submit your request to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain the requester's full name, individual's full name who is the subject of the record if different from the requester, current address, telephone number, a description of the records sought, and correspondence tracking number, if known.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves under the Privacy Act contained in this system should address written inquiries to the DLA Activity to which the initial request was addressed and/or directed or you may submit your request to the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Inquiry should contain the requester's full name, individual's full name who is the subject of the record if different from the requester, current address, telephone number, a description of the records sought, and correspondence tracking number, if known.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents,\* and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, Attn: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

\* Some information may be exempt from contesting record procedures.

**RECORD SOURCE CATEGORIES:**

Data is provided by the record subject, the FOIA/Privacy Act staff, and program software. Those individuals who submit initial requests and administrative appeals pursuant to the FOIA and the Privacy Act; the agency records searched in the process of responding to such requests and appeals; other agencies or entities that have referred to the Defense Logistics Agency requests concerning Defense Logistics Agency records, or that have consulted with the Defense Logistics Agency regarding the handling of particular requests.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

During the course of a FOIA/Privacy Act action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those "other" systems of records are entered into these FOIA/PA case records, Defense Logistics Agency hereby claims the same exemptions for the records as claimed in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 323. For additional

information contact the System manager.

[FR Doc. E9-1246 Filed 1-21-09; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

[Docket ID USAF-2009-0005]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.  
**Morgan E. Frazier,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AFPC N**

**SYSTEM NAME:**

Air Force Personnel Test 851, Test Answer Sheets (June 11, 1997, 62 FR 31793).

**CHANGES:**

\* \* \* \* \*

**SYSTEM LOCATION:**

Delete entry and replace with "Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Active duty airmen in grades E-4 through E-8, Senior Airman to Senior Master Sergeant."

\* \* \* \* \*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36-2605, Air Force Military Personnel Testing System, Chapter 1 and Attachment 9 and E.O. 9397 (SSN)."

**PURPOSE(S):**

Delete entry and replace with "Used by Air Force Personnel Center/Enlisted Promotions (AFPC/DPSOE) to score tests. The percent correct score on the Specialty Knowledge Test, Promotion Fitness Examination and United States Air Force Supervisory Examination, are weighted factors in the Weighted Airman Promotion System to advance airmen (E-4 to E-8) to the next higher enlisted grade. The percent correct score on the United States Air Force Supervisory Examination is used as an eligibility criterion for promotion to grade E-8 and E-9."

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with "Maintained in visible file binders/ cabinets and electronic storage media."

\* \* \* \* \*

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Chief, Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711."

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711.

Request should contain full name, address, Social Security Number (SSN) and a notary certified signature."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate Military Personnel Element (MPE) Enlisted Promotions Office at one of the 85 Air Force installations in Overseas or Continental United States locations.

Individual should provide their full name, address, Social Security Number and a notary certified signature."

\* \* \* \* \*

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Promotion Tests Answer Sheets are collected from all eligible active duty enlisted personnel, in the grades E-4 to E-8, Senior Airman to Senior Master Sergeant, who complete the required tests."

\* \* \* \* \*

**F036 AFPC N****SYSTEM NAME:**

Air Force Personnel Test 851, Test Answer Sheets

**SYSTEM LOCATION:**

Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty airmen in grades E-4 through E-8, Senior Airman to Senior Master Sergeant.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Item responses (answers) for Specialty Knowledge Tests (SKT), Promotion Fitness Examinations (PFE) and United States Air Force Supervisory Examinations (USAFSE).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36-2605, Air Force Military Personnel Testing System, Chapter 1 and Attachment 9 and E.O. 9397 (SSN).

**PURPOSE(S):**

Used by Air Force Personnel Center/ Enlisted Promotions (AFPC/DPSOE) to score tests. The percent correct score on the Specialty Knowledge Test, Promotion Fitness Examination and United States Air Force Supervisory Examination, are weighted factors in the Weighted Airman Promotion System to advance airmen (E-4 to E-8) to the next higher enlisted grade. The percent correct score on the United States Air

Force Supervisory Examination is used as an eligibility criterion for promotion to grade E-8 and E-9.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Maintained in visible file binders/ cabinets and electronic storage media.

**RETRIEVABILITY:**

Retrieved by Electronic Scanner Index Number (cross-referenced to Social Security Number).

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in vaults.

**RETENTION AND DISPOSAL:**

Maintained for 12 months following completion of promotion cycle for which member was tested, then destroyed by burning or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Chief, Air Force Personnel Center, Enlisted Promotion and Military Testing Branch (HQ AFPC/DPSOE), 550 C Street West, Randolph Air Force Base, TX 78150-4711.

Request should contain full name, address, Social Security Number (SSN) and a notary certified signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate Military Personnel Element (MPE)

Enlisted Promotions Office at one of the 85 Air Force installations in Overseas or Continental United States locations.

Individual should provide their full name, address, Social Security Number and a notary certified signature.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Promotion Tests Answer Sheets are collected from all eligible active duty enlisted personnel, in the grades E-4 to E-8, Senior Airman to Senior Master Sergeant, who complete the required tests.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt under 5 U.S.C. 552a(k)(6).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. E9-1226 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Department of the Air Force**

[Docket ID USAF-2009-0007]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of

records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **F036 AF A**

##### **SYSTEM NAME:**

Biographical Data and Automated Personnel Management System (November 18, 2004, 69 FR 67550)

##### **CHANGES:**

\* \* \* \* \*

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Active duty Air Force military, Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors, Army, Navy, and Marine Corps Active duty military and civilian personnel may be included when assigned to combatant commands for which Air Force is the Executive Agent. Records may be maintained in this system on personnel in a Temporary Duty (TDY) status for the duration of the TDY."

\* \* \* \* \*

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "Department of Air Force, Air Force Research Laboratory, Phillips Research Site, Information Requirements, AFRL/RVIR; 3550 Aberdeen Ave., SE, Kirtland AFB, NM."

##### **NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should contain individual's name and Social Security Number."

##### **RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should contain individual's name and Social Security Number (SSN)."

\* \* \* \* \*

#### **F036 AF A**

##### **SYSTEM NAME:**

Biographical Data and Automated Personnel Management System

##### **SYSTEM LOCATION:**

Headquarters United States Air Force; headquarters of major commands; field operating agencies; direct reporting units; headquarters of combatant commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty Air Force military, Air Force Reserve and Air National Guard personnel. Air Force civilian employees and contractors, Army, Navy, and Marine Corps Active duty military and civilian personnel may be included when assigned to combatant commands for which Air Force is the Executive Agent. Records may be maintained in this system on personnel in a Temporary Duty (TDY) status for the duration of the TDY.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical information which may include name, rank, Social Security Number, service dates, date of birth, civilian employment, military and civilian education, military and civilian experience, program specialties, hobbies, professional expertise and appointments, membership in professional societies, civic activities, state of license, and limited medical/immunization information for personnel readiness.

Limited locator type information which may include home address, home phone, home of record and name and address of next of kin.

Records relating to assignment to include unit of assignment, authorized and assigned grade, duty title, duty Air Force Specialty Code and Military Occupation Code, position number, date

assigned to organization, estimated date of departure, control tour code, assignment availability date, overseas tour start date, short tour return date, supervisor's name and date supervision began.

Performance data, i.e. date of last report and date next report due.

May also contain limited routine administrative training information consisting of application for training, name and date of course completion, and educational level, when not filed in a separate system.

Limited routine correspondence on promotions, military honors and awards, security and letters of appreciation, when not filed in a separate system.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

##### **PURPOSE(S):**

This system is established as a management tool to provide commanders and supervisors with ready reference information file for managing their personnel, manpower and resources.

To assist in determining and scheduling workload requirements in support of their organization's assigned mission.

This system serves a ready reference locator and can be used to produce manpower reports.

Used to determine eligibility/suitability for assignment/reassignment; determine eligibility for retirement related action, to make determinations on discharges or mobilization, deferments, and fulfillment of local or statutory requirements.

Records maintained as a historical file while individual is assigned to the unit.

Used to answers correspondence/telephone inquiries; updating and/or changing information in computer and/or individual record.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

Retrieved by name and/or Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need to know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**

Retain in office files until superseded, obsolete, no longer needed for reference, reassignment, separation or retirement of the individual or inactivation of the organization. Records on TDY personnel will be destroyed upon completion of the individual's TDY. Records are destroyed by tearing into pieces, shredding, pulping, or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Department of Air Force, Air Force Research Laboratory, Phillips Research Site, Information Requirements, AFRL/RVIR; 3550 Aberdeen Ave., SE., Kirtland AFB, NM.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should contain individual's name and Social Security Number (SSN).

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the respective unit commander or supervisor who maintains the records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should contain individual's name and Social Security Number (SSN).

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The individual, personnel or training records and records created by commander/supervisor.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1229 Filed 1-21-09; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Department of the Air Force**

[Docket ID USAF-2009-0003]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AF PC D****SYSTEM NAME:**

Officer Performance Report (OPR)/ Enlisted Performance Report (EPR) Appeal Case Files (June 11, 1997, 62 FR 31793).

**CHANGES:**

\* \* \* \* \*

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters Air Force Personnel Center (HQ AFPC), Randolph Air Force Base, TX 78150-4709; Headquarters Air Reserve Personnel Center (HQ ARPC), Denver, CO 80280-5000; and Military Personnel Flights (MPFs). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Present and former Officer and Enlisted personnel of the Regular Air Force, the Air Force Reserve and the Air National Guard who submit an appeal for correction of records."

**CATEGORY OF RECORDS IN SYSTEM:**

Delete entry and replace with "Individual's full name, Social Security Number (SSN), address, copy of applications, supporting documents, endorsements, and correspondence reflecting the board's decision on the case and other official records."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; implemented by Air Force Instruction 36-2401, Correcting Officer and Enlisted Evaluation Reports and E.O. 9397 (SSN)."

**PURPOSE(S):**

Delete entry and replace with "To answer individual inquires concerning evaluation appeals. At Air Force Personnel Center and Air Reserve Personnel Center levels, records are used as a basis for consideration in preparation of Air Staff advisory opinions on Officer Performance Report/Enlisted Performance Report (OPR/EPR) appeals."

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with "Maintained in visible file binders/ cabinets and electronic media storage."

\* \* \* \* \*

**RETENTION AND DISPOSAL:**

Delete entry and replace with "Air Force Personnel Center and Air Reserve Personnel Center case files are maintained for three calendar years from date of last action as indicated in the file, then destroyed. At Military Personnel Flights files are maintained for two calendar years from date of last action as indicated in the file and then destroyed. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning."

\* \* \* \* \*

**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written requests to Air Force Personnel Center, Evaluations Programs Section, (HQ AFPC/DPSID), 550 C Street West, Suite 7, Randolph Air Force Base, TX 78150-4709, or to the Military Personnel Flight where the appeal was processed. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notary certified signature."

\* \* \* \* \*

**RECORDS ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Air Force Personnel Center, Evaluations Programs Section, Air Force Personnel Center (HQ AFPC/DPSID), 550 C Street West, Randolph Air Force Base, TX 78150-4709, or to the Military Personnel Flight where the appeal was processed. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain with full name, Social Security Number (SSN) and complete mailing address with notary certified signature."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program; 32 CFR

part 806b; or may be obtained from the system manager."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Appeal applications and supporting documentation, endorsements, official records and documents from other sources, and correspondence reflecting the appeal board's decision. Also, when applicable, Air Staff advisory opinions furnished to the Air Force Board for Corrections of Military Records under the provisions of Air Force Instruction 36-2603, Air Force Board for Correction of Military Records."

\* \* \* \* \*

**F036 AF PC D**

**SYSTEM NAME:**

Officer Performance Report (OPR)/ Enlisted Performance Report (EPR) Appeal Case Files.

**SYSTEM LOCATION:**

Headquarters Air Force Personnel Center (HQ AFPC), Randolph Air Force Base, TX 78150-4709; Headquarters Air Reserve Personnel Center HQ ARPC), Denver, CO 80280-5000; and Military Personnel Flights (MPFs). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present and former Officer and Enlisted personnel of the Regular Air Force, the Air Force Reserve and the Air National Guard who submit an appeal for correction of records.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's full name, Social Security Number (SSN), address, copy of applications, supporting documents, endorsements, and correspondence reflecting the board's decision on the case and other official records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; implemented by Air Force Instruction 36-2401, Correcting Officer and Enlisted Evaluation Reports and E.O. 9397 (SSN).

**PURPOSE(S):**

To answer individual inquires concerning evaluation appeals. At Air Force Personnel Center and Air Reserve Personnel Center levels, records are used as a basis for consideration in preparation of Air Staff advisory opinions on Officer Performance Report/Enlisted Performance Report (OPR/EPR) appeals.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/ cabinets and electronic media storage.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Air Force Personnel Center and Air Reserve Personnel Center case files are maintained for three calendar years from date of last action as indicated in the file, then destroyed. At Military Personnel Flights files are maintained for two calendar years from date of last action as indicated in the file, and then destroyed. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Deputy Chief of Staff for Personnel, Randolph Air Force Base, TX 78150-6001.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on themselves should address written requests to Air Force Personnel Center, Evaluations Programs Section, (HQ AFPC/DPSID), 550 C Street West, Suite 7, Randolph Air Force Base, TX 78150-4709 or to the Military Personnel Flight where the appeal was processed. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notary certified signature.

**RECORDS ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to the Air Force Personnel Center, Evaluations Programs Section, Air Force Personnel Center, (HQ AFPC/DPSID), 550 C Street West, Randolph Air Force Base, TX 78150-4709 or to the Military Personnel Flight where the appeal was processed. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Written request should contain with full name, Social Security Number (SSN) and complete mailing address with notary certified signature.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Appeal applications and supporting documentation, endorsements, official records and documents from other sources, and correspondence reflecting the appeal board's decision. Also, when applicable, Air Staff advisory opinions furnished to the Air Force Board for Corrections of Military Records under the provisions of Air Force Instruction 36-2603, Air Force Board for Correction of Military Records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1234 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Department of the Air Force**

[Docket ID USAF-2009-0004]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AF PC O****SYSTEM NAME:**

General Officer Personnel Data System (June 11, 1997, 62 FR 31793).

**CHANGES**

\* \* \* \* \*

**SYSTEM LOCATION:**

Delete entry and replace with "Headquarters, United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330-1040, and Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4703."

\* \* \* \* \*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Individual's full name, Social Security Number (SSN), date of birth, active duty grade, mailing address and promotion board data; Career Brief data/cards; officer military record; photographs; biographies; retirement letters; dependent data; education data; promotion orders; assignment orders; demotion data; frocking letters; case studies; language data; effectiveness reports and promotion recommendations."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 805, The Air Staff and Air Force Instruction 36-2406, Officer and

Enlisted Evaluation System, Chapter 7, General Officer Evaluations and E.O. 9397 (SSN)."

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with "Maintained in visible file binders/ cabinets and electronic media storage."

\* \* \* \* \*

**SYSTEM MANAGERS AND ADDRESS:**

Delete entry and replace with "Director, Headquarters Air Force Personnel Center, Officer Promotions, Appointments & Selection Continuation Branch, (HQ AFPC/DPSO), 550 C Street West, Randolph Air Force Base, TX 78150-4713."

**NOTIFICATION PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether information on themselves is contained in this system should address written requests to Headquarters, United States Air Force, Deputy Chief of Staff/Personnel, Washington, DC 20330-5060.

Written request should contain full name, Social Security Number, date of birth, active duty grade and complete mailing address with notary certified signature."

**RECORDS ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking to determine whether information on them is contained in this system should address written inquiries to Headquarters, United States Air Force, Deputy Chief of Staff/Personnel, Washington, DC 20330-5060.

Written request should contain full name, date of birth, Social Security Number, active duty grade and complete mailing address with notary certified signature."

\* \* \* \* \*

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

\* \* \* \* \*

**F036 AF PC O****SYSTEM NAME:**

General Officer Personnel Data System.

**SYSTEM LOCATION:**

Headquarters, United States Air Force, 1040 Air Force Pentagon,

Washington, DC 20330-1040, and Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4703.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Retired, Active Duty, and Active Status Reserve of the Air Force General Officers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's full name, Social Security Number (SSN), date of birth, active duty grade, mailing address and promotion board data; Career Brief data/cards; officer military record; photographs; biographies; retirement letters; dependent data; education data; promotion orders; assignment orders; demotion data; frocking letters; case studies; language data; effectiveness reports and promotion recommendations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 805, The Air Staff and Air Force Instruction 36-2406, Officer and Enlisted Evaluation System, Chapter 7, General Officer Evaluations and E.O. 9397 (SSN).

**PURPOSE(S):**

To record active duty service and performance data about general officers for use in personnel management decisions and officer effectiveness, to include assignments, promotions and retirements.

To provide source data for preparing or compiling personnel management data to include career profiles, seniority and retirement lists, memorandums for record concerning actions taken on general officers and statistical analyses.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Non-exempt records from this system may be disclosed to other federal agencies in anticipation of an individual's assignment or upon actual assignment to that agency, to the extent that the information is relevant and necessary to the agency's decision on the matter.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/cabinets and electronic media storage.

**RETRIEVABILITY:**

Records are retrieved by last name and/or grade.

**SAFEGUARDS:**

Access to these records is given only to the Chief of Staff, Deputy Chief of Staff/Personnel, Assistant for General Officer Matters, Chief of Air Force Reserve, Chief National Guard, and other persons responsible for servicing or reviewing the record system in performance of their official duties, who are properly screened and cleared for need-to-know.

**RETENTION AND DISPOSAL:**

Retired General Officer records are maintained indefinitely; retired Lieutenant General, Major General, and Brigadier General Officer records are retained for 3 years, then reviewed to determine if there are any materials of historical value which warrant indefinite retention. If not, records are destroyed by tearing into pieces, shredding, pulping or macerating. Computer records are destroyed by degaussing or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Headquarters Air Force Personnel Center, Officer Promotions, Appointments & Selection Continuation Branch, (HQ AFPC/DPSO), 550 C Street West, Randolph Air Force Base, TX 78150-4713.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information on themselves is contained in this system should address written requests to Headquarters, United States Air Force, Deputy Chief of Staff/Personnel, Washington, DC 20330-5060.

Written request should contain full name, Social Security Number, date of birth, active duty grade and complete mailing address with notary certified signature.

**RECORDS ACCESS PROCEDURES:**

Individuals seeking to determine whether information on them is contained in this system should address written inquiries to Headquarters, United States Air Force, Deputy Chief of Staff/Personnel, Washington, DC 20330-5060.

Written request should contain full name, date of birth, Social Security Number, active duty grade and complete

mailing address with notary certified signature.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Personnel data base; member and Inspector General's investigations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Air Force General Officer Promotion and Effectiveness Reports with close out dates on or before January 31, 1991, may be exempt under the provisions of 5 U.S.C. 552a(k)(7) from subsections of 5 U.S.C. 552a(c)(3); (d); (e)(4)(H); and (f), as applicable, but only to the extent that disclosure would reveal the identity of a confidential source. For additional information contact the system manager.

An exemption rule has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in the 32 CFR part 806b. For further information contact the system manager.

[FR Doc. E9-1235 Filed 1-21-09; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

[Docket ID USAF-2009-0006]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-6488.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of

records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### F036 AF PC B

#### SYSTEM NAME:

Geographically Separated Unit Copy Officer Effectiveness/Airman Effectiveness Performance Report (June 11, 1997, 62 FR 31793).

#### CHANGES:

\* \* \* \* \*

#### SYSTEM NAME:

Delete entry and replace with "Geographically Separated Unit Copy Officer/Enlisted Performance Report."

\* \* \* \* \*

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Military personnel only.

Officers: Applies to Regular Active Duty Air Force/Air National Guard/Air Force Reserve personnel serving in rank/grades Warrant Officer (W-1) through Colonel (O-6).

Enlisted: Applies to active duty personnel in the rank/grades Airman Basic (E-1) through Chief Master Sergeant (E-9); Air National Guard and Air Force Reserve personnel in the rank/grades Staff Sergeant (E-5) through Chief Master Sergeant (E-9)."

#### CATEGORY OF RECORDS IN SYSTEM:

Delete entry and replace with "Officer Performance Report; Education/Training Report; Enlisted Performance Report; Promotion Recommendation Forms; Letters of Evaluations; Performance Feedback Worksheets; and Retention Recommendation Forms. Description of data contained therein: Name, Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of

potential, and comments regarding ratings."

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Power and duties; delegation by; as implemented by Air Force Instruction 36-2406, Officer and Enlisted Evaluation Systems and E.O. 9397 (SSN)."

\* \* \* \* \*

#### STORAGE:

Delete entry and replace with "Maintained in file folders and electronic media storage."

\* \* \* \* \*

#### NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Headquarters at Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should contain full name, address, Social Security Number (SSN) and notarized signature."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Headquarters at Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should contain full name, address, Social Security Number (SSN) and notarized signature."

#### CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program, 32 CFR part 806b; or may be obtained from the system manager."

#### RECORD SOURCE CATEGORIES:

Delete entry and replace with "Officer and Enlisted evaluation report data."

\* \* \* \* \*

### F036 AF PC B

#### SYSTEM NAME:

Geographically Separated Unit Copy Officer/Enlisted Performance Report.

#### SYSTEM LOCATION:

Headquarters of Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel only.

Officers: Applies to Regular Active Duty Air Force/Air National Guard/Air Force Reserve personnel serving in rank/grades Warrant Officer (W-1) through Colonel (O-6).

Enlisted: Applies to active duty personnel in the rank/grades Airman Basic (E-1) through Chief Master Sergeant (E-9); Air National Guard and Air Force Reserve personnel in the rank/grades Staff Sergeant (E-5) through Chief Master Sergeant (E-9).

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Performance Report; Education/Training Report; Enlisted Performance Report; Promotion Recommendation Forms; Letters of Evaluations; Performance Feedback Worksheets; and Retention Recommendation Forms. Description of data contained therein: Name, Social Security Number; active and permanent grades; specialty data; organization location and Personnel Accounting Symbol; period of report; number of days of supervision; performance evaluation scales; assessment of potential, and comments regarding ratings.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Power and duties; delegation by; as implemented by Air Force Instruction 36-2406, Officer and Enlisted Evaluation Systems and E.O. 9397 (SSN).

#### PURPOSE(S):

Used as a record of individual's past job performance.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Maintained in file folders and electronic media storage.

**RETRIEVABILITY:**

Information in the system is retrieved by name.

**SAFEGUARDS:**

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters at Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Headquarters at Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should contain full name, address, Social Security Number (SSN) and notarized signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to the Headquarters at Major Subordinate Commands and numbered Air Forces. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request should contain full name, address, Social Security Number (SSN) and notarized signature.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332, Privacy Act Program, 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Officer and Enlisted evaluation report data.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9-1238 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Department of the Air Force**

[Docket ID USAF-2009-0008]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Department of the Air Force proposes to alter a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The proposed action will be effective on February 23, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCX, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330-1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Brodie at (703) 696-7557.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on January 13, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: January 13, 2009.

**Morgan E. Frazier,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AF DP G**

**SYSTEM NAME:**

Military Equal Opportunity and Treatment (January 28, 2002, 67 FR 3883).

**CHANGES:**

\* \* \* \* \*

**SYSTEM NAME:**

Delete entry and replace with "Equal Opportunity and Sexual Assault Prevention and Response Records."

\* \* \* \* \*

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Department of Defense (DoD) military Component Active Duty, Reserve and Guard personnel; civilian employees; and members of the public involved in complaints or investigations relating to the Equal Opportunity and Sexual Assault Prevention and Response Programs."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Complainant's full name, Social Security Number (SSN), correspondence and records concerning incidents or complaint data, endorsements and recommendations, formal and informal complaints of unlawful discrimination, sexual harassment, sexual assault, and clarifications/investigations concerning aspects of equal opportunity or sexual assault. Records/forms necessary to conduct background checks for Sexual Assault Response personnel/volunteers."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; Pub. L. 105-85, section 591; AFD 36-27, Social Actions; Air Force Instruction 36-2706, Military Equal Opportunity and Treatment Program; For Sexual Assault: Pub L. 108-375, as amended and supplemented, October 28, 2004, Section 577(e); AFD 36-60, Sexual Assault Prevention and Response (SAPR) Program and E.O. 9397 (SSN)."

**PURPOSE(S):**

Delete entry and replace with "To investigate and resolve complaints of unlawful discrimination and sexual harassment under the Equal Opportunity Program, and to maintain records created as a result of the filing of allegations and appeals involving

unlawful discrimination because of race, color, religion, sex, or national origin. To assist and provide victim services to victims of sexual assault under the Sexual Assault Prevention and Response Program, and to maintain records created as a result of restricted or unrestricted reporting of allegations of sexual assault under the Sexual Assault Prevention and Response Program.

To conduct necessary background checks of Sexual Assault Prevention and Response Program volunteers/personnel.

To report information as required by the FY 98 National Defense Authorization Act, and used as a data source for descriptive statistics.”

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with “In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(3) as follows:

In cases of confirmed sexual harassment, identification of complainant and offender will be provided to congressional committees as required by the FY 98 National Defense Authorization Act. In cases of unrestricted or restricted reports, release of identification of complainant and offender may be provided for official purposes consistent with guidance from the DoD Sexual Assault Prevention and Response Office.

The DoD ‘Blanket Routine Uses’ published at the beginning of the Air Force’s compilation of systems of records notices apply to this system.”

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with “Paper records in file folders and on computer electronic files and computer output products.”

**RETRIEVABILITY:**

Delete entry and replace with “Retrieved by complainant’s name, and/or Social Security Number.”

**SAFEGUARDS:**

Delete entry and replace with “Paper records are maintained in locked file cabinets, locked desk drawers or locked offices. Computer records are password protected and limited to personnel authorized access to the records in order to accomplish their official duties; encryption of information in the records

may also be required. Records are also accessed by personnel responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know.”

\* \* \* \* \*

**SYSTEM MANAGER(S) AND ADDRESSES:**

Delete entry and replace with “Air Force Equal Opportunity Office (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330–1040.

Air Force Sexual Assault Prevention and Response Office (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330–1040.”

**NOTIFICATION PROCEDURES:**

Delete entry and replace with “Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Air Force Equal Opportunity (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330–1040 or Air Force Sexual Assault Prevention and Response (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330–1040. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.

Individuals should provide their full name, Social Security Number (SSN) and notarized signature.”

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with “Individuals seeking access to records about themselves contained in this system should address written requests to Air Force Equal Opportunity (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330–1040 or Air Force Sexual Assault Prevention and Response (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330–1040. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.

Individuals should provide their full name, Social Security Number (SSN) and notarized signature.”

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with “The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.”

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with “Information obtained from the complainants and alleged victims, witnesses and other individuals,

investigative reports, DoD and Component records and reports.”

\* \* \* \* \*

**F036 AF DP G**

**SYSTEM NAME:**

Equal Opportunity and Sexual Assault Prevention and Response Records.

**SYSTEM LOCATION:**

Headquarters United States Air Force, headquarters of major commands, Numbered Air Forces, field operating agencies, direct reporting units; headquarters of combatant commands for which Air Force is Executive Agent, and all Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of Defense (DoD) military Component Active Duty, Reserve and Guard personnel; civilian employees and members of the public involved in complaints or investigations relating to the Equal Opportunity and Sexual Assault Prevention and Response Programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Complainant’s full name, Social Security Number (SSN), correspondence and records concerning incidents or complaint data, endorsements and recommendations, formal and informal complaints of unlawful discrimination, sexual harassment, sexual assault, and clarifications/investigations concerning aspects of equal opportunity or sexual assault. Records/forms necessary to conduct background checks for Sexual Assault Response personnel/volunteers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; Pub. L. 105–85, section 591; AFD 36–27, Social Actions; Air Force Instruction 36–2706, Military Equal Opportunity and Treatment Program; For Sexual Assault: Pub L. 108–375, as amended and supplemented, October 28, 2004, Section 577(e); AFD 36–60, Sexual Assault Prevention and Response (SAPR) Program and E.O. 9397 (SSN).

**PURPOSE(S):**

To investigate and resolve complaints of unlawful discrimination and sexual harassment under the Equal Opportunity Program, and to maintain records created as a result of the filing of allegations and appeals involving unlawful discrimination because of

race, color, religion, sex, or national origin. To assist and provide victim services to victims of sexual assault under the Sexual Assault Prevention and Response Program, and to maintain records created as a result of restricted or unrestricted reporting of allegations of sexual assault under the Sexual Assault Prevention and Response Program.

To conduct necessary background checks of Sexual Assault Prevention and Response Program volunteers/personnel.

To report information as required by the FY 98 National Defense Authorization Act, and used as a data source for descriptive statistics.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(3) as follows:

In cases of confirmed sexual harassment, identification of complainant and offender will be provided to congressional committees as required by the FY 98 National Defense Authorization Act. In cases of unrestricted or restricted reports, release of identification of complainant and offender may be provided for official purposes consistent with guidance from the DoD Sexual Assault Prevention and Response Office.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

By complainant's name and/or Social Security Number.

**SAFEGUARDS:**

Paper records are maintained in locked file cabinets, locked desk drawers or locked offices. Computer records are password protected and limited to personnel authorized access to the records in order to accomplish their official duties; encryption of information in the records may also be required. Records are also accessed by personnel responsible for servicing the records in performance of their official

duties who are properly screened and cleared for need-to-know.

**RETENTION AND DISPOSAL:**

Retained for two years and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESSES:**

Air Force Equal Opportunity Office (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330-1040.

Air Force Sexual Assault Prevention and Response Office (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330-1040.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Air Force Equal Opportunity (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330-1040 or Air Force Sexual Assault Prevention and Response (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330-1040. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name, Social Security Number (SSN) and notarized signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system should address written requests to Air Force Equal Opportunity (AF/A1Q), 1040 Air Force Pentagon, Washington DC 20330-1040 or Air Force Sexual Assault Prevention and Response (AF/A1SF), 1040 Air Force Pentagon, Washington DC 20330-1040. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individuals should provide their full name, Social Security Number (SSN) and notarized signature.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from the complainants and alleged victims, witnesses and other individuals, investigative reports, DoD and Component records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Investigatory material compiled for law enforcement purposes may be

exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. E9-1245 Filed 1-21-09; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Beluga to Fairbanks (B2F) Natural Gas Transportation Pipeline Proposed by the Alaska Natural Gas Development Authority (ANGDA)**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Alaska District, U.S. Army Corps of Engineers (Corps) intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the proposed Beluga to Fairbanks (B2F) Alaska natural gas transportation pipeline. The Corps will be evaluating a permit application for work under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The Environmental Impact Statement (EIS) will be used as a basis for the permit decision and to ensure compliance with the National Environment Policy Act.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and the DEIS can be answered by: Ms. Serena Sweet, Regulatory Division, telephone: (907) 753-2819, toll free in AK: (800) 478-2712, Fax: (907) 753-5567, e-mail: [serena.e.sweet@usace.army.mil](mailto:serena.e.sweet@usace.army.mil), mail: U.S. Army Corps of Engineers, CEPOA-RD, Post Office Box 6898, Elmendorf AFB, Alaska 99506-0898. Additional information may be obtained at <http://www.angdaB2Feis.com>.

**SUPPLEMENTARY INFORMATION:** 1. The permit applicant, Alaska Natural Gas Development Authority (ANGDA), is proposing to construct a 460-mile pipeline with a 20- to 24-inch hard pipe bidirectional line from Beluga, AK to Delta Junction, AK and a 10- to 15-inch soft line from Delta Junction to North Pole/Fairbanks, AK to deliver natural gas from the Beluga gas fields to interior Alaska. The proposed route and adjacent service area would begin in Beluga, AK, continuing through the community of Palmer, AK then easterly along the Glenn Highway, with a deviation northwardly through Chitna Pass to Glennallen, AK. It would then turn north following the Richardson Highway paralleling the Trans Alaska Pipeline System (TAPS) route to the city of Delta Junction, AK. The pipe would then turn west continuing along the TAPS route to a connection point near the Golden Valley Electric Association (GVEA) power plant in North Pole, AK. The pipeline would be buried throughout the corridor. Three compressor stations are proposed at Palmer, Glennallen, and North Pole, AK.

2. The right of way for the proposed pipeline corridor is owned by numerous entities. The largest land owners along the proposed route include the Bureau of Land Management, the Military (Fort Greely, Fort Wainwright and Eielson Air Force Base), Native Allotments/Corporations, private land owners and the State of Alaska.

3. Additional alternatives to the applicant's proposal include four routing segments variations and one design alternative (A map depicting the location of each alternate route is available at the EIS Web site):

a. *Route Alternative 1:* Utilization of a Chugach Electric easement from Beluga, AK across the Susitna River to Palmer, AK rather than the ENSTAR pipeline route. This route would deviate northeastwardly from the proposed route west of the Susitna River and would realign with the proposed route south of Knik, AK.

b. *Route Alternative 2:* Employ full utilization of the Glenn Highway route from Sutton, AK to Eureka, AK rather than deviating through Chitna Pass north of Chickaloon, AK. This route would deviate from the proposed route at Sutton, AK and follow the Glenn Highway, realigning with the proposed route at approximately milepost 128 of the Glenn Highway, southwest of Nelchina, AK.

c. *Route Alternative 3:* Utilization of the TAPS corridor from Delta Junction, AK to North Pole, AK as an alternate route to bring gas directly to the GVEA power plant.

d. *Route Alternative 4:* Utilization of the Parks Highway route from Fairbanks, AK to Wasilla, AK rather than use of the Glenn Highway route.

e. *Design Alternative 1:* Use of 4-inch steel tubing for the segment from Delta Junction, AK to North Pole, AK rather than plastic tubing.

4. Scoping: a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, Tribal, local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. These meetings will be held to receive public input on the proposed purpose and need of the project, to identify significant issues and to discuss proposed alternatives. The scoping process will help to further explain the purpose and need plus the alternatives to be reviewed in the DEIS. The project scoping period will begin on February 1, 2009 and end on March 15, 2009.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the affected areas. The following major issues will be analyzed in depth in the DEIS: The natural gas delivery system construction and operation and its affect upon the surrounding communities; essential fish habitat; threatened and endangered species including critical habitat; cultural resources; socioeconomic; alternatives; secondary and cumulative impacts.

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. The Bureau of Land Management is participating as a cooperating agency.

5. The scoping meetings are tentatively planned for the following dates and locations and each meeting with include an open-house from 5 p.m.–6 p.m. and a project presentation and questions and answer session from 6 p.m.–8 p.m. (Please consult the above referenced Web site for any changes and additional information including the scoping summary):

a. *Anchorage:* March 4, 2009 at Sheraton Hotel (401 East 6th Avenue, Anchorage, AK).

b. *Wasilla:* March 5, 2009 at Central Mat-Su Public Safety Building (101 West Swanson Drive, Wasilla).

c. *Glennallen:* February 24, 2009 at Tazlina Village Hall (Mile 110.5 Richardson Highway, Glennallen, AK).

d. *Delta Junction:* February 25, 2009 at Delta Junction Community Center (2288 Deborah Street, Delta Junction, AK).

e. *Fairbanks/North Pole:* February 26, 2009 Wedgewood Resort (212 Wedgewood Drive, Fairbanks, AK).

6. It is anticipated that the DEIS will be available for public review in the fall of 2009.

Dated: January 9, 2009.

**Serena E. Sweet,**

*Project Manager, Alaska District.*

[FR Doc. E9–1212 Filed 1–21–09; 8:45 am]

**BILLING CODE 3710-NL-P**

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 23, 2009.

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

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility,

and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 14, 2009.

**Angela C. Arrington,**

*Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* New Collection.

*Title:* College.gov Career Tools and College Coaches.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household; Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 400.

Burden Hours: 133.

*Abstract:* The purpose for including the Career Tool and I'm Going Guide features is to provide students with real world, relatable examples of current college students who were able to overcome obstacles in order to reach a postsecondary education. This feature builds on College.gov's objective to provide students with the inspiration and hopes to see that a college education is possible for everyone (especially targeting underrepresented populations). In the I'm Going Guide feature, students can select current college students to view their profiles, see why and how they went to college, and read the college student's advice for high school students. Each student's profile would include their first name, photo, major and brief description about the student, such as where they are studying, and tips for other students. For the Career Tool feature, the site would show 24 different college grads at a time, but the goal would be to have about 75 that we could "shuffle" on the tool's display. Each college grad's profile would provide their first name, major, career field, and advice for students interested in their field of study. This information clearance will enable the Department to college grad profiles for including in the Career Tool and I'm Going Guide.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3929. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of

Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto: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](mailto: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. E9-1143 Filed 1-21-09; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

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

**DATES:** Interested persons are invited to submit comments on or before February 23, 2009.

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

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 14, 2009.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Postsecondary Education

*Type of Review:* Reinstatement.

*Title:* The Application for Grants Under the Child Care Access Means Parents in School Program.

*Frequency:* Once every four (4) years.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 350.

Burden Hours: 2,975.

*Abstract:* The Child Care Access Means Parents in School Application Package requests information from applicants during the competitive phase. The information collected is reviewed by non-federal reviewers to determine institutions with the greatest population of students that meet the eligibility criteria for distribution of funds under the program to assist them with child care needs as they move through their educational progression.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3928. 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](mailto: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](mailto: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. E9-1145 Filed 1-21-09; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Office of Safe and Drug-Free Schools; Overview Information; Safe and Drug-Free Schools and Communities (SDFSC) Programs for Native Hawaiians; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2008 Funds

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.186C.

**DATES:** Applications Available: January 22, 2009.

*Deadline for Transmittal of Applications:* March 9, 2009.

*Deadline for Intergovernmental Review:* May 7, 2009.

#### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* SDFSC Programs for Native Hawaiians awards grants to organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs to prevent or reduce violence, the use, possession and distribution of illegal drugs, or delinquency.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from sections 4115(b)(1)(C)(i) and 4117(c)(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7115 and 7117).

*Absolute Priority:* For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects to plan, conduct, and administer programs for Native Hawaiian youth to prevent or reduce violence, the use, possession and distribution of illegal drugs, or delinquency.

*Definition:* The following definition is from section 4117(b) of the ESEA and applies to this competition:

*Native Hawaiian* means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

*Program Authority:* 20 U.S.C. 7117.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

#### II. Award Information

*Type of Award:* Discretionary grants.  
*Estimated Available Funds:* \$579,518.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2009 and in FY 2010 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* \$250,000–\$300,000.

*Estimated Average Size of Awards:* \$289,759.

*Estimated Number of Awards:* 2.

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

*Project Period:* Up to 60 months.

#### III. Eligibility Information

1. *Eligible Applicants:* Organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiians.

**Note:** In accordance with section 4117(b) of the ESEA, *Native Hawaiian* means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

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

3. *Other:* a. *Equitable Participation by Private School Children and Teachers:* Section 9501 of the (ESEA) (20 U.S.C. 7881), requires that State educational agencies (SEAs), local educational agencies (LEAs), or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, applicants must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an applicant must consult with private school officials on

preventing or reducing violence, the use, possession and distribution of illegal drugs, or delinquency, and related issues for private schools in the applicant's service area.

b. *Principles of Effectiveness:*

Programs, activities, and strategies implemented with funds awarded under this competition must meet the requirements of the principles of effectiveness described in section 4115(a) of the ESEA (20 U.S.C. 7115(a)).

c. *Maintenance of Effort:* Section 9521 of the ESEA requires that LEAs may receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

#### IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the program office. To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fund/grant/apply/grantapps/index.html>. To obtain a copy from the program office, contact: Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., room 10073, Potomac Center Plaza (PCP), Washington, DC 20202-4260. *Telephone:* (202) 245-7893 or by e-mail: [pat.rattler@ed.gov](mailto:pat.rattler@ed.gov).

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

*Applications Available:* January 22, 2009.

*Deadline for Transmittal of Applications:* March 9, 2009.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application

electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review: May 7, 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 in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We are participating as a partner in the Governmentwide Grants.gov Apply site. The SDFSC Programs for Native Hawaiians competition, CFDA Number 84.186C, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <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.

You may access the electronic grant application for the SDFSC Programs for Native Hawaiians 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 84.186, not 84.186C).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this 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](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 submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your

application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

#### b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.186C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not

accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

#### c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.186C), 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**

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

### 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 Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditures information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of SDFSC Programs for Native Hawaiians:

- (1) The percentage of students annually served by the grant who show a decrease in violent or disruptive behavior, or delinquency; and
- (2) The percentage of students annually served by the Grant who show a decrease in the use of illegal drugs.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide in its annual and final performance reports data about its progress in meeting these measures.

### VII. **Agency Contacts**

*For Further Information Contact:* Pat Rattler, U.S. Department of Education, 400 Maryland Avenue, SW., room 10073, Potomac Center Plaza (PCP), Washington, DC 20202-4260. *Telephone:* (202) 245-7893 or by *e-mail:* [pat.rattler@ed.gov](mailto:pat.rattler@ed.gov).

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

### VIII. **Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER**

**INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: January 14, 2009.

**Deborah A. Price,**

*Assistant Deputy Secretary For Safe and Drug-Free Schools.*

[FR Doc. E9-1194 Filed 1-21-09; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 618-182]

#### Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 13, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 618-182.

c. *Date Filed:* January 8, 2009.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Jordan Dam.

f. *Location:* On the Coosa River, in Elmore, Chilton, and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Barry Lovett, Alabama Power Company, 600 N. 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257-1258.

i. *FERC Contact:* Peter Yarrington, [peter.yarrington@ferc.gov](mailto:peter.yarrington@ferc.gov), (202) 502-6129.

j. *Deadline for filing comments, motions to intervene and protests:* January 28, 2009.

*All documents (original and eight copies) should be filed with:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company (APC) is requesting a temporary variance of the Jordan Dam Project's minimum flow requirements due to continuing drought conditions in the southeast, and to ensure, to the extent possible, that there will be sufficient water available in the Coosa River to support both reservoir and downstream environmental, municipal and industrial water supply and navigation needs. The project license requires, from July 1 through March 31, a continuous minimum base flow of 2,000 cubic feet per second (cfs), regardless of inflow. Beginning April 1, a continuous minimum base flow of 4,000 cubic feet per second (cfs) is required for 18 hours per day, with a pulse flow release for 6 hours per day. During June, flows are ramped back down in daily increments to a continuous 2,000 cfs. APC is requesting a variance to release from Jordan Dam no less than a continuous flow of 2,000 cfs,  $\pm$  5 percent, from January 1, 2009 through December 31, 2009. The licensee indicates that, in 2009, it would be its intent to provide flows as close to normal operation as possible, while maintaining flexibility to adjust to changing drought conditions. Any adjustments that were to involve reductions in flow releases would be performed by ramping down flows by no more than 66.7 cfs per day. The licensee is also proposing to facilitate conference calls with the resource agencies to discuss project flow releases and operations, to address drought-related issues, and to coordinate with the U.S. Fish and Wildlife Service in conducting any appropriate monitoring of the federally-listed *Tulotoma*

*magnifica* snail population below the dam. APC would also provide appropriate notice to the public of periods in which flows below the dam may be modified.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426 or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://ferc.gov> using the "eLibrary" link. Enter the docket number (P-618) in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docsfiling/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(I)(iii) and the

instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-1132 Filed 1-21-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13351-000]

#### Marseilles Land & Water Company; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing a Deadline for Submission of Final Amendments

January 13, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 13351-000.

c. *Date filed:* December 30, 2008.

d. *Applicant:* Marseilles Land & Water Company.

e. *Name of Project:* Marseilles Lock and Dam Project.

f. *Location:* On the Illinois River, in the town of Marseilles, La Salle County, Illinois. This project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825 (r).

h. *Applicant Contact:* Lee W. Mueller, Architect and Vice President, Marseilles Land & Water Company, 4132 S. Rainbow Blvd., #247, Las Vegas, NV 89103, (702) 367-7302.

i. *FERC Contact:* Steve Kartalia, [Stephen.Kartalia@ferc.gov](mailto:Stephen.Kartalia@ferc.gov), (202) 502-6131.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or

person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* March 2, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "eFiling" link. After logging into the eFiling system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process.

m. This application is not ready for environmental analysis at this time.

n. *Project Description:* The Marseilles Lock and Dam Project would utilize the head created by the existing 24-foot-high Army Corps of Engineers (Corps) Marseilles Lock and Dam and two existing Corps headgate structures and would consist of: (1) The existing north and south headraces in which a portion of the south headrace would be filled in and joined to the existing north headrace which would be deepened to accommodate the flow from both headraces leading to; (2) a new intake structure and forebay leading to; (3) a new powerhouse containing four generating units with a total installed capacity of 10.26 megawatts (MW); (4) a new tailrace discharging water back to the Illinois River; (5) a new underground transmission line; and (6) appurtenant facilities.

The project would operate in a run-of-river mode.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number filed to access the documents. For assistance, please contact FERC Online Support at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676 or for TTY, contact (202) 502-8659. A copy is also available for inspection and

reproduction at the address in item h above.

p. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the Illinois Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR pt. 800.4.

r. *Final amendments:* Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-1133 Filed 1-21-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL09-28-000]

#### City of Pasadena, CA; Notice of Filing

January 2, 2009.

Take notice that on December 23, 2008, the City of Pasadena, California filed its fourth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-1126 Filed 1-21-09; 8:45 am]  
BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. EL09-27-000]

**City of Riverside, CA; Notice of Filing**

January 2, 2009.

Take notice that on December 23, 2008, the City of Riverside, California filed its sixth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on January 22, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-1127 Filed 1-21-09; 8:45 am]  
BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Sunshine Act Meeting Notice**

January 8, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** January 15, 2009, 10 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\* **Note** —Items listed on the agenda may be deleted without further notice.

**FOR FURTHER INFORMATION CONTACT:** Kimberly D. Bose, Secretary, Telephone (202) 502-8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at <http://www.ferc.gov> using the eLibrary link, or may be examined in the Commission's Public Reference Room.

944TH—MEETING

Item No.	Docket No.	Company
<b>Administrative</b>		
A-1	AD02-1-000	Agency Administrative Matters.
A-2	AD02-7-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD06-3-000	Energy Market Update.
<b>Electric</b>		
E-1	AD09-3-000	Compliance with Mandatory Reliability Standards.
E-2	OMITTED.	
E-3	OMITTED.	
E-4	OMITTED.	
E-5	RR08-6-001, RR07-14-002	North American Electric Reliability Corporation.
E-6	QF09-37-001	Ausra CA I, LLC.
E-7	ER04-449-005	New York Independent System Operator, Inc. and New York Transmission Owners.
	ER04-449-006.	
	ER04-449-009.	
	ER04-449-010.	
	ER04-449-011.	
	ER04-449-012.	
	ER04-449-013.	
	ER04-449-014.	

## 944TH—MEETING—Continued

Item No.	Docket No.	Company
E-8	ER04-449-015. ER04-449-017. ER07-521-005	New York Independent System Operator, Inc.
E-9	OMITTED.	
E-10	OMITTED.	
E-11	EL08-12-001	PJM Industrial Customer Coalition v. PJM Interconnection, L.L.C.
E-12	OMITTED.	
E-13	ER05-849-009	California Independent System Operator Corporation.
E-14	OMITTED.	
E-15	ER08-1170-001	PJM Interconnection, L.L.C.
E-16	ER07-653-001	The United Illuminating Company.
E-17	OMITTED.	
E-18	ER06-1458-000 ER06-1458-001. ER06-1458-002.	E. On U.S., LLC.
E-19	EL03-37-009	Town of Norwood Massachusetts v. National Grid USA, New England Electric System, Massachusetts Electric Company, and Narragansett Electric Light Company.
E-20	ER08-966-001	Northeast Utilities Service Company.
E-21	PA08-2-000	Southwest Power Pool, Inc.
E-22	ER03-563-064	Devon Power LLC.
E-23	ER00-3251-015 ER00-3251-017. ER99-754-016 ER99-754-017. ER98-1734-014 ER98-1734-016. ER01-1919-011 ER01-1919-013. ER01-1147-006, ER01-1147-007 ER01-513-021 ER01-513-022 ER99-2404-011, ER99-2404-012	Exelon Generation Company, LLC. AmerGen Energy Company, LLC. Commonwealth Edison Company. Exelon Energy Company. PECO Energy Company. Exelon West Medway, LLC. Exelon Wyman, LLC, Exelon New Boston, LLC, Exelon Framingham, LLC. Exelon New England Power Marketing, L.P.
E-24	ER08-412-002	Commonwealth Edison Company, Exelon Generation Company, LLC.
E-25	EL08-72-000	NRG Energy, Inc. v. Entergy Services, Inc.
E-26	EL08-84-000	Arkansas Electric Energy Consumers, Inc. v. Entergy Corporation, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Louisiana, Inc., Entergy Louisiana, L.L.C., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.
E-27	ER06-787-002, ER06-787-003	Idaho Power Company.
E-28	EL08-46-000, EL08-46-001	MMC Energy, Inc. v. California Independent System Operator Corporation.

## Gas

G-1	RP04-274-000 RP04-274-009. RP00-157-015.	Kern River Gas Transmission Company.
G-2	IN09-7-000  IN09-8-000  IN09-11-000 IN09-12-000 IN09-9-000	Tenaska Marketing Ventures, Tenaska Energy Services, LLC, Tenaska Gas Company, Tenaska Gas Storage, Tenaska Grimes, Inc., Tenaska Marketing, Inc., Tenaska Operations, Inc., Tenaska Storage Company. ONEOK, Inc., ONEOK Partners, L.P., ONEOK Energy Services Company, L.P., ONEOK Energy Marketing Company, ONEOK Energy Services Canada, LTD, ONEOK Field Services Company, L.L.C., ONEOK Midstream Gas Supply, L.L.C., Bear Paw Energy, L.L.C., Kansas Gas Service, a division of ONEOK, Inc. Klabzuba Oil & Gas, F.L.P. Jefferson Energy Trading, LLC, Wizco, Inc., Golden Stone Resources, LLC.
G-3		Seminole Energy Services, LLC, Seminole Gas Company, LLC, Seminole High Plains, LLC, Lakeshore Energy Services, LLC, Vanguard Energy Services, LLC.
G-4	IN09-10-000	National Fuel Marketing Company, LLC, NFM Midstream, LLC, NFM Texas Pipeline, LLC, NFM Texas Gathering, LLC.

## Hydro

H-1	P-10359-039	Snoqualmie River Hydro, Inc. Public Utility District No. 1 of Snohomish County, Washington.
H-2	P-2485-051, P-1889-070	FirstLight Hydro Generating Company.

## Certificates

C-1	CP07-62-000 CP07-63-000 CP07-64-000. CP07-65-000.	AES Sparrows Point LNG, LLC. Mid-Atlantic Express, LLC.
C-2	CP06-365-002	Bradwood Landing LLC.

944TH—MEETING—Continued

Item No.	Docket No.	Company
	CP06-366-002 .....	NorthernStar Energy LLC.
	CP06-376-002.	
	CP06-377-002.	
C-3 .....	CP05-130-005 .....	Dominion Cove Point, LNG, LP.
	CP05-132-004.	
	CP05-395-004.	
	CP05-131-004 .....	
C-4 .....	CP08-431-000 .....	Dominion Transmission, Inc.
C-5 .....	CP09-34-000 .....	Columbia Gas Transmission Corporation.
		ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company.

**Kimberly D. Bose,**  
*Secretary.*

A free Web cast of this event is available through <http://www.ferc.gov>. Anyone with Internet access who desires to view this event can do so by navigating to <http://www.ferc.gov>'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit <http://www.CapitolConnection.org> or contact Danelle Springer or David Reininger at 703-993-3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9-1089 Filed 1-21-09; 8:45 am]  
BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. ER09-498-000]

**Vickers Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

January 13, 2009.

This is a supplemental notice in the above-referenced proceeding of Vickers Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 2, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-1134 Filed 1-21-09; 8:45 am]

BILLING CODE 6717-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R09-OAR-2008-0323; FRL-8763-8]

**Adequacy Status of Motor Vehicle Emissions Budgets in Submitted San Joaquin Valley 8-Hour Ozone Reasonable Further Progress and Attainment Plan for Transportation Conformity Purposes; California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy and inadequacy.

**SUMMARY:** In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budgets for the years 2011, 2014 and 2017 from the San Joaquin Valley 2007 Ozone Plan are adequate for transportation conformity purposes. In this notice, EPA is also notifying the public that the Agency has found that the motor vehicle emissions budgets for the years 2008, 2020 and 2023 from the San Joaquin Valley 2007 Ozone Plan are inadequate for transportation conformity purposes. The San Joaquin Valley 2007 Ozone Plan was submitted to EPA on November 16, 2007 by the California Air Resources Board (CARB) as a revision to the California State Implementation Plan (SIP), and includes reasonable further progress and attainment demonstrations for the 8-hour ozone standard. On February 1, 2008, CARB submitted supplemental technical information related to reasonable further progress for the 8-hour ozone standard in San Joaquin Valley. As a result of our adequacy findings, the San Joaquin Valley Metropolitan Planning Organizations

and the U.S. Department of Transportation must use the adequate budgets, and cannot use the inadequate budgets, for future conformity determinations.

**DATES:** This finding is effective February 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Karina O'Connor, U.S. EPA, Region IX, Air Division AIR-2, 75 Hawthorne Street, San Francisco, CA 94105-3901;

(775) 833-1276 or [occonnor.karina@epa.gov](mailto:occonnor.karina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to CARB on January 8, 2009 stating that the motor vehicle emissions

budgets in the submitted San Joaquin Valley 2007 Ozone Plan, as supplemented by CARB on February 1, 2008, for the reasonable further progress (RFP) milestone years of 2011, 2014, 2017 are adequate. The finding is available at EPA's conformity Web site: [http://www.epa.gov/otaq/state\\_resources/transconf/adequacy.htm](http://www.epa.gov/otaq/state_resources/transconf/adequacy.htm). The adequate motor vehicle emissions budgets are provided in the following table:

**MOTOR VEHICLE EMISSION BUDGETS**  
[Summer planning tons per day]

Year County	2011		2014		2017	
	VOC <sup>1</sup>	NO <sub>x</sub>	VOC <sup>1</sup>	NO <sub>x</sub>	VOC <sup>1</sup>	NO <sub>x</sub>
Fresno .....	15.5	47.9	12.9	37.2	11.1	29.1
Kern (SJV) .....	15.7	79.4	13.5	64.1	11.6	49.5
Kings .....	3.4	15.9	2.8	12.3	2.3	9.4
Madera .....	3.7	12.2	3.1	9.7	2.6	7.7
Merced .....	6.2	28.8	5.1	22.3	4.2	17.1
San Joaquin .....	12.1	34.7	10.1	27.8	8.6	21.3
Stanislaus .....	9.0	22.3	7.5	17.2	6.5	13.4
Tulare .....	9.2	20.9	7.7	16.6	6.7	13.1

<sup>1</sup> The plan uses a comparable State term, reactive organic gases (ROG).

Our letter dated January 8, 2009 also states that budgets for 2008, 2020, and 2023 are inadequate for transportation conformity purposes. The San Joaquin Valley 8-hour ozone plan does not show reasonable further progress for the year 2008. As a result, one of the transportation conformity rule's adequacy criteria is not met (40 CFR 93.118(e)(4)(iv)), and thus, the 2008 budget is inadequate. The State has

included additional on-road mobile source emissions reductions in the budgets for 2020 and 2023 from the 2007 State Strategy for the California SIP. The adequate budgets include no such reductions but rather reflect emissions reductions from CARB rules that have already been adopted. EPA has determined that the 2020 and 2023 budgets are inadequate because they include new emission reductions that

do not result from specific or enforceable control measures. As a result, three of the transportation conformity rule's adequacy criteria are not met (40 CFR 93.118(e)(4)(iii), (iv), and (v)) for these budgets. The inadequate motor vehicle emissions budgets are provided in the following table:

**INADEQUATE MOTOR VEHICLE EMISSION BUDGETS**  
[Summer planning tons per day]

Year County	2008		2020		2023	
	VOC <sup>1</sup>	NO <sub>x</sub>	VOC <sup>1</sup>	NO <sub>x</sub>	VOC <sup>1</sup>	NO <sub>x</sub>
Fresno .....	18.6	58.5	8.0	16.9	7.8	15.7
Kern (SJV) .....	18.1	93.9	8.5	28.4	8.1	24.8
Kings .....	3.9	18.3	1.7	5.3	1.6	4.7
Madera .....	4.4	14.6	1.9	4.8	1.9	4.5
Merced .....	7.4	35.5	2.9	9.9	2.8	9.0
San Joaquin .....	13.9	40.0	6.3	12.7	6.3	11.9
Stanislaus .....	10.5	26.7	4.9	8.0	4.6	7.1
Tulare .....	10.5	23.4	5.2	8.4	4.8	7.4

<sup>1</sup> The plan uses a comparable State term, reactive organic gases (ROG).

Receipt of the motor vehicle emissions budgets in the San Joaquin Valley 2007 Ozone Plan was announced on EPA's transportation conformity Web site on April 18, 2008. We received comments in response to the adequacy review posting. The finding and the response to comments are available at EPA's transportation conformity Web

site: [http://www.epa.gov/otaq/state\\_resources/transconf/adequacy.htm](http://www.epa.gov/otaq/state_resources/transconf/adequacy.htm).

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining

whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission

budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) which was promulgated in our August 15, 1997 final rule (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 9, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
[FR Doc. E9–1110 Filed 1–21–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0371; FRL–8763–9]

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Flexible Polyurethane Foam Fabrication, Renewal, EPA ICR Number 2027.04, OMB Control Number 2060–0516

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before February 23, 2009.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–OECA–2008–0371, to (1) EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200

Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Sounjay Gairola, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4003; *e-mail address:* [gairola.sounjay@epa.gov](mailto:gairola.sounjay@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0371, which is available for public viewing online at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to [www.regulations.gov](http://www.regulations.gov).

**Title:** NESHAP for Flexible Polyurethane Foam Fabrication (Renewal)

**ICR Numbers:** EPA ICR Number 2027.04, OMB Control Number 2060–0516.

**ICR Status:** This ICR is scheduled to expire on March 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Flexible Polyurethane Foam Fabrication (40 CFR part 63, subpart M) were proposed on August 8, 2001 (66 FR 41729) and promulgated on April 14, 2003 (68 FR 18062).

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart M.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Flexible polyurethane foam fabrication facilities.

*Estimated Number of Respondents:* 11.

*Frequency of Response:* Initially, occasionally, semiannually, and annually.

*Estimated Total Annual Hour Burden:* 12,303.

*Estimated Total Annual Cost:* \$1,004,834, which includes: labor costs of \$1,002,163, annualized capital/startup costs of \$997, and \$1,674 in O&M costs.

*Changes in the Estimates:* There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Apparent differences of less than 500 hours are attributable to rounding; in previous years, hours were rounded to the nearest thousand; this ICR presents more exact figures.

Dated: January 13, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E9-1169 Filed 1-21-09; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a \$453 million direct loan to support the U.S. export of approximately \$372 million worth of mining equipment and services for a mining project in the Dominican Republic. The U.S. exports will enable the company in the Dominican Republic to produce approximately 28.35 metric tons of gold and 140 metric tons of silver per year on average during the 11-year repayment term of the loan. Available information indicates that most of this new gold and silver production will be sold internationally. Interested parties may submit comments on this transaction by e-mail to [economic.impact@exim.gov](mailto:economic.impact@exim.gov) or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14

days of the date this notice appears in the **Federal Register**.

**Helene S. Walsh,**

*Vice-President, Policy Analysis Division.*

[FR Doc. E9-1164 Filed 1-21-09; 8:45 am]

**BILLING CODE 6690-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 08-214; DA 08-2819]

### NFL Enterprises LLC, Complainant v. Comcast Cable Communications, LLC, Defendant; File No. CSR-7876-P

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document finds that the Administrative Law Judge exceeded his authority by setting a hearing date beyond the 60-day deadline specified in the Hearing Designation Order for issuing a recommended decision regarding the above-captioned program carriage dispute and orders that the Media Bureau will proceed to resolve this dispute without the benefit of a recommended decision from the ALJ.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Steven Broeckaert, [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov), or David Konczal, [David.Konczal@fcc.gov](mailto:David.Konczal@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Memorandum Opinion and Order, DA 08-2819, adopted and released on December 31, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Synopsis of the Order

1. On October 10, 2008, the Media Bureau issued a *Memorandum Opinion and Hearing Designation Order* ("HDO") in the above captioned matter. 73 FR 65312, November 3, 2008. The HDO, among other things, referred certain program carriage disputes, including the above-captioned matter, to an Administrative Law Judge ("ALJ") to resolve factual disputes as to whether the defendant cable operators had discriminated against the complainant video programmers or required a financial interest in the complainant video programmer's programming as a condition for carriage in violation of the Commission's program carriage rules. 73 FR 65312, 65322, 65323, November 3, 2008. The HDO ordered the ALJ to make and return a recommended decision to the Commission within 60 days of the release date of the HDO, *i.e.*, by December 9, 2008. Unfortunately, the ALJ has not issued a recommended decision by the deadline but, instead, has set a date to begin a hearing more than three months past the HDO's deadline without indicating when a recommended decision will be released. *Herring Broadcasting, Inc. v. Time Warner Cable Inc. et al.*, Order, MB Docket No. 08-214, FCC 08M-50 (rel. Dec. 2, 2008).

2. On December 24, 2008, the Media Bureau issued a *Memorandum Opinion and Order* (the "*Dec. 24th MO&O*") finding that the ALJ exceeded his authority by setting a hearing date beyond the HDO's 60-day deadline for issuing a recommended decision. *In the Matter of Herring Broadcasting Inc., d/b/a WealthTV, et al.*, Memorandum Opinion and Order, DA 08-2805, MB Docket 08-214 (rel. Dec. 24, 2008), at ¶¶ 2, 14-16 ("*Dec. 24th MO&O*"). In the *Dec. 24th MO&O*, the Media Bureau stated that the ALJ's limited authority to consider these matters extended through December 9, 2008. *See id.* The Media Bureau noted that this deadline has passed, and the ALJ's delegated authority over these hearing matters has thus expired under the terms of the HDO. *See id.* While the above-captioned matter was not included in the caption of the *Dec. 24th MO&O*, NFL Enterprises, LLC has filed a Motion for Clarification arguing that the logic and reasoning of that decision applies equally to the above-captioned matter. *See NFL Enterprises LLC, Motion for Clarification*, MB Docket No. 08-214, File No. CSR-7876-P (filed Dec. 29, 2008). We agree and therefore the Media Bureau will proceed to resolve the above-captioned program carriage

dispute without the benefit of a recommended decision from the ALJ.

3. Accordingly, *It is ordered*, that the Hearing Designation Order for the above-captioned matter has *Expired*, the proceeding set for hearing before the Administrative Law Judge is *Terminated*, and the Media Bureau will proceed to resolve the above-captioned program carriage dispute.

4. *It is further ordered* that all parties to the above-captioned proceeding will be served with a copy of this Memorandum Opinion and Order by e-mail and by certified mail, return receipt requested.

5. *It is further ordered* that a copy of this Memorandum Opinion and Order or a summary thereof *Shall Be Published* in the **Federal Register**.

Federal Communications Commission.

**Monica Shah Desai,**

*Chief, Media Bureau.*

[FR Doc. E9-1172 Filed 1-21-09; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[RM No. 11510; DA 09-5]

### Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking To Transition Part 22 Cellular Services to Geographic Market-Area Licensing

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission ("Commission") seeks comment on a Petition for Rulemaking ("Petition") filed by CTIA—The Wireless Association ("CTIA") on October 8, 2008, seeking to transition certain cellular licensing rules to a geographic market area-based license system.

**DATES:** Interested parties may file comments on or before February 23, 2009, and reply comments on or before March 9, 2009.

**ADDRESSES:** You may submit comments, identified by RM No. 11510, by any of the following methods:

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

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail

(although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-1327 or by e-mail to [joyce.jones@fcc.gov](mailto:joyce.jones@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice in RM No. 11510, DA 09-5, released on January 5, 2009. The full text of the Public Notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpiweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the Public Notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08-165. Additionally, the complete item is available on the Commission's Web site at <http://www.fcc.gov>.

1. On October 8, 2008, CTIA filed a Petition for Rulemaking, seeking to transition part 22 cellular licensing to a geographic market area-based license system.<sup>1</sup> To effectuate this transition, CTIA proposes that the Commission re-issue all cellular licenses to "incumbents" on a Cellular Market Area ("CMA") basis in place of their existing Cellular Geographic Service Area licenses, subject to two carve outs. First, cellular licensees in a CMA providing service using unserved area licenses would consult with the CMA license

<sup>1</sup> Cellular markets initially licensed more than five years ago are subject to the Commission's Unserved Area licensing rules, which require prior approval for new cellular systems, and expansions of existing systems, on a cell site-by-cell site basis. See 47 CFR 22.949 and 22.953.

holder "to determine each license's service area boundaries following the transition to digital service." Second "incumbent" cellular licensees providing service beyond the boundaries of their CMAs "would consult with the CMA licensee of the affected market to establish service area boundaries" and the "incumbent's" license would be modified to reflect these boundaries. In either instance, if the parties cannot reach agreement, CTIA proposes that the matter be referred to the Commission for adjudication. The Commission seeks comment on CTIA's Petition.

2. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service

mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

- *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties should also send a copy of their filings to Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 6413, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [joyce.jones@fcc.gov](mailto:joyce.jones@fcc.gov). Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

Federal Communications Commission.

**Roger S. Noel,**

*Chief, Mobility Division/Wireless Telecommunications Bureau.*

[FR Doc. E9-1254 Filed 1-21-09; 8:45 am]

BILLING CODE 6712-01-P

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2009.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *NewStar Financial, Inc.*, Boston, Massachusetts, to become a bank holding company by acquiring 100 percent of the voting shares of Southern Commerce Bank, National Association, Tampa, Florida.

Board of Governors of the Federal Reserve System, January 15, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9-1195 Filed 1-21-09; 8:45 am]

BILLING CODE 6210-01-S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-09-08AW]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance

Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

Quarantine Station Illness Response Forms: Airline, Maritime, and Land/Border Crossing—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

CDC proposes to collect patient-level clinical, epidemiologic, and demographic data from ill travelers and their possible contacts in order to fulfill its regulatory responsibility to prevent the importation of communicable diseases from foreign countries (42 CFR Part 71) and interstate control of communicable diseases in humans (42 CFR Part 70).

#### Background and Brief Description

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. The regulations that implement this law, 42 CFR Parts 70 and 71, authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances (e.g., airplanes, cruise ships, trucks, etc.), persons, and shipments of animals and etiologic agents in order to protect the public health. The regulations also require conveyances to immediately report an "ill person" or any death on board to the Quarantine Station prior to arrival in the United States. An "ill person" is defined in statute by:

—Fever ( $\geq 100$  °F or 38 °C) persisting  $\geq 48$  hours

—Fever ( $\geq 100$  °F or 38 °C) AND rash, glandular swelling, or jaundice

—Diarrhea ( $\geq 3$  stools in 24 hours or greater than normal amount)

The Severe Acute Respiratory Syndrome (SARS) situation and concern about pandemic influenza and other communicable diseases have prompted CDC Quarantine Stations to recommend that *all* illnesses be reported prior to arrival.

CDC Quarantine Stations are currently located at 20 international U.S. Ports of Entry. When a suspected illness is reported to the Quarantine Station,

officers promptly respond to this report by meeting the incoming conveyance (when possible), collecting information and evaluating the patient(s), and determining whether an ill person can safely be admitted into the U.S. If Quarantine Station staff are unable to meet the conveyance, the crew or medical staff of the conveyance are trained to complete the required documentation and forward it (using a secure system) to the Quarantine Station for review and follow-up.

To perform these tasks in a streamlined manner and ensure that all relevant information is collected in the most efficient and timely manner possible, Quarantine Stations use a number of forms—the Airline Screening and Illness Response Form, the Ship Illness/Death Reporting Form, and the Land/Border Crossing Form—to collect data on passengers with suspected illness and other travelers/crew who may have been exposed to an illness. These forms are also used to respond to a report of a death aboard a conveyance.

The purpose of all of the forms is the same: to collect information that helps

quarantine officials detect and respond to potential public health communicable disease threats. All forms collect the following categories of information: demographics and mode of transportation, clinical and medical history, and any other relevant facts (e.g., travel history, traveling companions, etc.). As part of this documentation, quarantine public health officers look for specific signs and symptoms common to the nine quarantinable diseases (Pandemic influenza; SARS; Cholera; Plague; Diphtheria; Infectious Tuberculosis; Smallpox; Yellow fever; and Viral Hemorrhagic Fevers), as well as most communicable diseases in general. These signs and symptoms include fever, difficulty breathing, shortness of breath, cough, diarrhea, jaundice, or signs of a neurological infection. The forms also collect data specific to the traveler's conveyance.

These data are used by Quarantine Stations to make decisions about a passenger's suspected illness as well as its communicability. This in turn

enables Quarantine Station staff to assist conveyances in the public health management of passengers and crew.

The estimated total burden on the public, included in the chart below, can vary a great deal depending on the severity of the illness being reported, the number of contacts, the number of follow-up inquiries required, and who is recording the information (e.g., Quarantine Station staff versus the conveyance medical authority). In all cases, Quarantine Stations have implemented practices and procedures that balance the health and safety of the American public against the public's desire for minimal interference with their travel and trade. Whenever possible, Quarantine Station staff obtain information from other documentation (e.g., manifest order, other airline documents) to reduce the amount of the public burden.

There is no cost to respondents other than their time to complete the survey. The total estimated annualized burden for this data collection is 172 hours.

ESTIMATE OF ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Airline Illness or Death Investigation Form .....	1320	1	6/60
International Maritime Illness or Death Report .....	200	1	3/60
International Maritime Illness or Death Investigation Form .....	200	1	7/60
Land Border Illness or Death Investigation Form .....	60	1	6/60

Dated: January 12, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-1225 Filed 1-21-09; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-09-0691]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-

mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

State Medicaid Tobacco Coverage Survey—Reinstatement—National Center for Chronic Disease Prevention and Control (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Tobacco use remains the leading preventable cause of death in the United States despite the availability of evidence-based treatments for tobacco dependence, which include counseling and FDA-approved pharmacotherapies. To increase both the use of treatment by smokers attempting to quit and the number of smokers who quit successfully, the Guide to Community Preventive Services recommends reducing the out-of-pocket cost of

effective tobacco-dependence treatments, and the Public Health Service (PHS) Clinical Practice Guideline supports expanded insurance coverage for tobacco-dependence treatment.

Medicaid recipients have approximately 50% greater smoking prevalence than the overall U.S. adult population, and they are disproportionately affected by tobacco-related disease and disability. Information about the amount and type of coverage for tobacco-dependence treatment offered by Medicaid has been collected during 1998, 2000, 2001, 2002, 2003, 2005, 2006, and 2007. Information collection for the three most recent years (2005–2007) was conducted by the Centers for Disease Control and Prevention (OMB No. 0920-0691, expiration date 8/31/2008). Respondents were Medicaid directors or their designees in all 50 states and the District of Columbia.

CDC requests OMB approval to reinstate information collection for an

additional three-year period. Responses will be submitted electronically using a web-based survey instrument. Minor changes to the instrument are proposed to address compliance with recommendations made in the updated PHS clinical practice guideline issued in May of 2008, such as coverage for combination therapies, smokeless tobacco use, and states' familiarity with and use of the 2000 PHS guideline. The

minor changes are not expected to affect the overall burden estimate. To minimize burden, each respondent will only be asked to record changes that occurred since the time of the previous submission. As in previous years, each respondent will also attach a copy of the state's Medicaid coverage plan to their completed survey, in order to assist the research team with the interpretation of responses.

The information to be collected will allow CDC to continue monitoring compliance with the most recent PHS recommendations and the progress of State Medicaid Programs toward the 2010 National Health Objectives and Healthy People 2010 goals.

There are no costs to respondents except the time to complete the survey. The total estimated burden hours are 26.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Medicaid Programs .....	51	1	30/60

Dated: January 13, 2009.  
**Maryam I. Daneshvar,**  
*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*  
 [FR Doc. E9-1227 Filed 1-21-09; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces an Evaluation of Downdraft Vented Nail Salon Tables (VNTs)**

**Authority:** 29 U.S.C. Sections 651 *et seq.*

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Division of Applied Research and Technology (DART), NIOSH, is conducting an evaluation of downdraft vented salon nail tables (VNTs). This notice invites developers, manufacturers, and vendors of VNTs to submit new, unused, downdraft VNTs for evaluation of operational characteristics and effectiveness in reducing levels of a source point tracer gas at standard distances from the vent. A 6-month supply of manufacturer recommended filters is to be submitted to NIOSH at the address below, together with the VNT.

Evaluation parameters for the VNTs will include, but are not limited to:

Airflow and capture characteristics, noise level, ergonomic features, and filter life. Manufacturers, vendors, and developers who wish to submit VNTs with filters for evaluation are invited to respond to this announcement. A report on each VNT submitted for evaluation, including feedback on the evaluation parameters and staff recommendations, will be sent to the submitter. Results of the evaluation will potentially be used to develop educational materials for nail technicians and may also be disseminated through reports, publications, or presentations. NIOSH does not intend to identify manufacturers in its publications but testing information referencing particular manufacturers would be releasable if requested under the Freedom of Information Act (FOIA).

**DATES:** Written letter of interest must be received within 90 calendar days of publication in the **Federal Register**. The deadline for receipt of VNT and filter submissions is June 30, 2009. Evaluations will begin subject to the dates VNT and filter submissions are received. The VNTs will be retained for up to 10 months while being evaluated, after which they will be returned.

**ADDRESSES:** Manufacturers, vendors, and developers who wish to submit VNTs with filters for evaluation are invited to respond to this announcement by sending a written letter of interest to NIOSH/DART, Robert A. Taft Laboratories, 4676 Columbia Parkway, Mailstop C-23, Cincinnati, Ohio 45226, *Attention:* Susan Reutman, *e-mail address:* [SReutman@cdc.gov](mailto:SReutman@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Responses shall include: A description of the VNT including the manufacturer, schedule of availability of the VNT and filters for evaluation, and a statement of the terms

under which the VNT will be made available for evaluation. Shipping and handling costs (including insurance) to ship the VNTs to NIOSH and for NIOSH to return the VNTs to the submitter will be the responsibility of the submitter. NIOSH reserves the right to decide which VNT submissions will be evaluated based on compliance with the specifications described above. NIOSH also reserves the right not to proceed in this manner.

**Note:** As a government entity, we cannot endorse any specific product directly, indirectly, or by implication. NIOSH will not be responsible for any costs related to usage, wear and tear or accidental damage to the VNT during transport or while the VNT is at NIOSH.

*Contact Person for Technical Information:* Susan Reutman, Ph.D., telephone (513) 533-8286, or e-mail [SReutman@cdc.gov](mailto:SReutman@cdc.gov).

Dated: January 2, 2009.  
**James D. Seligman,**  
*Chief Information Officer, Centers for Disease Control and Prevention.*  
 [FR Doc. E9-1193 Filed 1-21-09; 8:45 am]  
**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2008-D-0264]

**Compliance Policy Guide Sec. 540.370—Fish and Fishery Products—Decomposition; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the

availability of Compliance Policy Guide Sec. 540.370—Fish and Fishery Products—Decomposition (the CPG). The CPG provides guidance for FDA staff on decomposition in fish and fishery products.

**DATES:** Submit written or electronic comments on the CPG at any time.

**ADDRESSES:** Submit written comments on the CPG to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 240-632-6861. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Samuels, Center for Food Safety and Applied Nutrition (HFS-325), Food and Drug Administration, 100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2300.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of July 18, 2008 (73 FR 41361), FDA announced the availability of draft CPG Sec. 540.370—Fish and Fishery Products—Decomposition and gave interested parties an opportunity to submit comments. The agency received no comments on the draft CPG but on its own initiative made a few editorial changes for clarification purposes. The CPG provides guidance for FDA staff on decomposition in fish and fishery products. The CPG also contains information that may be useful to the regulated industry and to the public.

FDA is issuing this CPG as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The CPG represents the agency's current thinking on FDA's direct reference enforcement criteria related to decomposition in fish and fishery products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic

comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The CPG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at <http://www.regulations.gov>.

**III. Electronic Access**

Persons with access to the Internet may obtain the CPG at [http://www.fda.gov/ora/compliance\\_ref/cpg/default.htm](http://www.fda.gov/ora/compliance_ref/cpg/default.htm).

Dated: January 12, 2009.

**Michael A. Chappell,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. E9-1142 Filed 1-21-09; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Leadership Education in Neurodevelopmental and Other Related Disabilities MCH Training Program**

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of Class Deviation from Project/Budget Period Funding Policies.

**SUMMARY:** HRSA will provide 2 additional years of support in the absence of competition for one cohort of grants under the Leadership Education in Neurodevelopmental and Other Related Disabilities (LEND) MCH Training Program. HRSA will extend the project period to June 30, 2011, for the cohort of the LEND program expected to compete in fiscal year (FY) 2009, which would correspond to the sunset of the Combating Autism Act. Currently, there are 34 LEND grants split into two cohorts (17 each) with different end dates; one group is scheduled to compete in FY 2009 (Cohort A), and the other in FY 2011 (Cohort B). HRSA will

non-competitively extend with funds the 5-year project periods for those LEND grantees ending on June 30, 2009, for 2 additional budget periods at the same level of support for the same scope of activities which they received in FY 2008.

**SUPPLEMENTARY INFORMATION:**

**Intended Recipients of the Award**

Seventeen programs in the LEND cohort are expected to compete in FY 2009. These programs presently have active LEND grants: University of Iowa, Johns Hopkins University, University of Missouri, University of Nebraska, Dartmouth Hitchcock Medical Center, Albert Einstein College of Medicine, Children's Hospital of Pittsburgh, University of South Dakota, University of Vermont, Virginia Commonwealth University, West Virginia University, University of Massachusetts Medical School, Ohio State University, Vanderbilt University, Children's Research Institute, Indiana University, University of Oklahoma.

Amount of Individual Supplemental Awards: **Note:** These funding levels are expected to continue in FYs 2009 and 2010.

Grantee	FY 2008 award
University of Iowa .....	\$491,265
Johns Hopkins University .....	884,277
University of Missouri .....	393,012
University of Nebraska .....	412,663
Dartmouth Hitchcock Medical Center .....	451,964
Albert Einstein College of Medicine .....	491,265
Children's Hospital of Pittsburgh .....	393,012
University of South Dakota .....	432,313
University of Vermont .....	451,964
Virginia Commonwealth University .....	451,964
West Virginia University .....	439,825
University of Massachusetts Medical School .....	604,256
Ohio State University .....	393,011
Vanderbilt University .....	393,012
Children's Research Institute ...	393,012
Indiana University .....	481,440
University of Oklahoma .....	442,139

*Current Project Periods:* 7/1/04 through 6/30/09.

*Period of Supplemental Funding:* 7/1/09 through 6/30/11.

**Authority:** Combating Autism Act of 2006, Public Law No. 109-416, § 399BB(e)(1)(A), 120 Stat 2821, 2826 (2006).

*CFDA Number:* 93.110.

**FOR FURTHER INFORMATION CONTACT:** Laura Kavanagh; Branch Chief, MCH Training Program, Division of Research, Training and Education; Maternal and Child Health Bureau; (301) 443-2254.

*Justification for the Exception to Competition:* HRSA is ending the two cohort system for the following reason:

The Combating Autism Act of 2006 is scheduled to sunset in September of 2011. With this legislation, it is critical to have sufficient and accurate data to evaluate the progress of screening and diagnosing a greater number of children with autism spectrum disorder (ASD) and other developmental disabilities and assuring that they receive evidenced based services. A national evaluation will be conducted to contribute to the HHS Secretary's Report to Congress on progress related to ASD and other developmental disabilities as required by the Combating Autism Act. From a programmatic perspective, it is imperative to collect data from the same group of grantees over the project period to assess program goals as requested in the National Evaluation. By extending the project period for two additional years for the LEND cohort with the current project period ending date of June 30, 2009, MCHB will be able to collect common data elements from both LEND cohorts through the end of Combating Autism Act which sunsets in 2011. Doing so will help ensure that there will be a more cohesive and uniform collection of data being gathered and analyzed across both cohorts which will increase sample size and ultimately, data validity and study power. If it becomes necessary to hold a competition for the LEND cohort in FY 2009 and new applicants were to apply and be successful, there would be the potential for less uniformity in the data collection. It is crucial that there is as much meaningful data gathered in the remaining time available from both cohorts to ensure that the National Evaluation is an accurate reflection of the program activities.

Under this deviation, MCHB will provide the LEND grantees in LEND Cohort A, currently expected to compete in FY 2009, with the same amount of funds for the same scope of activities that they received in FY 2008 for both the FY2009 and 2010 budget periods.

Dated: January 13, 2009.

**Elizabeth M. Duke,**  
Administrator.

[FR Doc. E9-1236 Filed 1-21-09; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; 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:* Center for Scientific Review Special Emphasis Panel Multiscale Models of the Physiome.

*Date:* January 29-30, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Malgorzata Klosek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435-2211, [klosekm@csr.nih.gov](mailto:klosekm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering, Integrated Review Group Biomedical Imaging Technology Study Section.

*Date:* February 2-3, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Guest Suites Doheny Beach, 34402 Pacific Coast Highway, Dana Point, CA 92629.

*Contact Person:* Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435-1171, [rosenl@csr.nih.gov](mailto:rosenl@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Oncological Sciences Integrated Review Group, Tumor Microenvironment Study Section.

*Date:* February 2-3, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Eun Ah Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451-4467, [choe@csr.nih.gov](mailto:choe@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

*Date:* February 2-3, 2009.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Jean D. Sipe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435-1743, [sipej@csr.nih.gov](mailto:sipej@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Development-2 Study Section.

*Date:* February 5, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Neelakanta Ravindranath, Ph.D., MVSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301-435-1034, [ravindr@csr.nih.gov](mailto:ravindr@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

*Date:* February 5-6, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Tina Mcintyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301-594-6375, [mcintyrt@csr.nih.gov](mailto:mcintyrt@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Infectious Diseases and Microbiology, Integrated Review Group, Clinical Research and Field Studies of Infectious Diseases Study Section.

*Date:* February 6, 2009.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Soheyyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-0903, [saadisoh@csr.nih.gov](mailto:saadisoh@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience, Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.

*Date:* February 9-10, 2009.

*Time:* 8 a.m. to 1 p.m.  
*Agenda:* To review and evaluate grant applications.

*Place:* InterContinental Mark Hopkins Hotel, One Nob Hill, San Francisco, CA 94108.

*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301-435-1259, [nadis@csr.nih.gov](mailto:nadis@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

*Date:* February 10-11, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

*Contact Person:* Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451-1323, [assamunu@csr.nih.gov](mailto:assamunu@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Child Psychopathology.

*Date:* February 10, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

*Contact Person:* Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435-4445, [doussarj@csr.nih.gov](mailto:doussarj@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience, Integrated Review Group Cellular and Molecular Biology, of Neurodegeneration Study Section.

*Date:* February 10-11, 2009.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301-435-1203, [taupenol@csr.nih.gov](mailto:taupenol@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hypertension.

*Date:* February 10, 2009.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Maqsood A. Wani, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301-435-2270, [wanimaqs@csr.nih.gov](mailto:wanimaqs@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Macromolecular Structure and Function D Study Section.

*Date:* February 11, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435-2037, [mackj2@csr.nih.gov](mailto:mackj2@csr.nih.gov).

*Name of Committee:* Hematology Integrated Review Group, Hematopoiesis Study Section.

*Date:* February 11, 2009.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, 301-435-1195, [hanspalm@csr.nih.gov](mailto:hanspalm@csr.nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review, Group Biomaterials and Biointerfaces Study Section.

*Date:* February 11, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Ross D. Shonaf, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, 301-435-2786, [shonatr@csr.nih.gov](mailto:shonatr@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Central Visual Processing Study Section.

*Date:* February 11, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Judith A. Finkestein, PhD, Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 5178, MSC 7844 Bethesda, MD 20892 301-435-1249 [finkelsj@csr.nih.gov](mailto:finkelsj@csr.nih.gov)

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group Synthetic and Biological Chemistry B Study Section

*Date:* February 11-12, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Kathryn M. Koeller, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, [koellerk@csr.nih.gov](mailto:koellerk@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience, Integrated Review Group Cellular and Molecular Biology of Glia Study Section.

*Date:* February 12-13, 2009.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435-4433, [behart@csr.nih.gov](mailto:behart@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Auditory System Study Section.

*Date:* February 12-13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Baltimore Inner Harbor, 110 South Eutaw Street, Baltimore, MD 21201.

*Contact Person:* Lynn E. Luetheke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435-1018, [luetkel@csr.nih.gov](mailto:luetkel@csr.nih.gov).

*Name of Committee:* Oncological Sciences Integrated Review Group, Chemo/Dietary Prevention Study Section.

*Date:* February 12-13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Washington DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435-5877, [mulherns@csr.nih.gov](mailto:mulherns@csr.nih.gov).

*Name of Committee:* Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

*Date:* February 12-13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

*Contact Person:* Melinda Tinkle, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, [tinklem@csr.nih.gov](mailto:tinklem@csr.nih.gov).

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

*Date:* February 12-13, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Joyce C. Gibson, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301-435-4522, [gibsonj@csr.nih.gov](mailto:gibsonj@csr.nih.gov).

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Development—1 Study Section.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street, Conference, Washington, DC 20007.

*Contact Person:* Cathy Wedeen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301-435-1191, [wedeenc@csr.nih.gov](mailto:wedeenc@csr.nih.gov).

*Name of Committee:* Digestive Sciences Integrated Review Group, Pathobiology of Kidney Disease Study Section.

*Date:* February 1–2, 2009.

*Time:* 8 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301-451-1325, [ryssokok@csr.nih.gov](mailto:ryssokok@csr.nih.gov).

*Name of Committee:* Digestive Sciences Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases, Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301-435-1501, [morrisr@csr.nih.gov](mailto:morrisr@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology, Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Catamaran Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

*Contact Person:* Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301-435-2514, [stassid@csr.nih.gov](mailto:stassid@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience, Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435-1121, [bhagavas@csr.nih.gov](mailto:bhagavas@csr.nih.gov).

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435-1850, [dowellr@csr.nih.gov](mailto:dowellr@csr.nih.gov).

*Name of Committee:* Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Manzoor Zarger, MS, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435-2477, [zargerma@csr.nih.gov](mailto:zargerma@csr.nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies, Integrated Review Group, Biodata Management and Analysis Study Section.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Fisherman's Wharf, San Francisco, 1300 Columbus Avenue, San Francisco, CA 94133.

*Contact Person:* Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301-435-1740, [fanp@csr.nih.gov](mailto:fanp@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review, Group Biobehavioral Regulation, Learning and Ethology Study Section.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

*Contact Person:* Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172,

MSC 7848, Bethesda, MD 20892, (301) 435-0692, [geraldmel@csr.nih.gov](mailto:geraldmel@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Systemic Injury by Environmental Exposure.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435-0682, [perrinp@csr.nih.gov](mailto:perrinp@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Program Project: Cell Biology.

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301-435-2406, [ariasj@csr.nih.gov](mailto:ariasj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Systemic Injury by Environmental Exposure.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301-435-1169, [greenwep@csr.nih.gov](mailto:greenwep@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301-435-1043, [amirs@csr.nih.gov](mailto:amirs@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group, Macromolecular Structure and Function E Study Section

*Date:* February 12–13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435-1747, [rosenzweig@csr.nih.gov](mailto:rosenzweig@csr.nih.gov).

*Name of Committee:* Cardiovascular Sciences, Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

*Contact Person:* Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451-1375, [ot3d@nih.gov](mailto:ot3d@nih.gov).

*Name of Committee:* Risk, Prevention and Health Behavior, Integrated Review Group, Risk, Prevention and Intervention for Addictions Study Section.

*Date:* February 12-13, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Gayle M. Boyd, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7808, Bethesda, MD 20892, 301-451-9956, [gboyd@mail.nih.gov](mailto:gboyd@mail.nih.gov).

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

*Date:* February 12-13, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Maqsood A. Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301-435-2270, [wanimaqs@csr.nih.gov](mailto:wanimaqs@csr.nih.gov).

*Name of Committee:* Health of the Population, Integrated Review Group, Community Influences on Health Behavior.

*Date:* February 12-13, 2009.

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

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301-435-0681, [schwarte@csr.nih.gov](mailto:schwarte@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology, Integrated Review Group, Pathogenic Eukaryotes Study Section.

*Date:* February 12-13, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Porto Vista Hotel and Suites, 1835 Columbia Street, San Diego, CA 92101.

*Contact Person:* Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 435-2306, [boundst@csr.nih.gov](mailto:boundst@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology, Integrated Review Group, Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

*Date:* February 12-13, 2009.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton La Jolla Hotel, 3299 Holiday Court, La Jolla, CA 92037.

*Contact Person:* Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-1227, [jig@csr.nih.gov](mailto:jig@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Skeletal Muscle and Exercise Physiology Study Section.

*Date:* February 12, 2009.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435-1215, [mcdonald@csr.nih.gov](mailto:mcdonald@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Virology.

*Date:* February 12-13, 2009.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435-2398, [pughjohn@csr.nih.gov](mailto:pughjohn@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral And Skin Sciences, Integrated Review Group, Musculoskeletal Rehabilitation Sciences Study Section.

*Date:* February 12-13, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435-1786, [peihanj@csr.nih.gov](mailto:peihanj@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 8, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-781 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Research Resources; Notice of Closed Meetings

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

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

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; CM SUPPLEMENT.

*Date:* February 19, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Bethesda North Hotel and Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301-435-0965.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; CMRC SEP.

*Date:* February 25, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Martha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301-435-0810, [matocham@mail.nih.gov](mailto:matocham@mail.nih.gov).

*Name of Committee:* National Center for Research Resources Special Emphasis Panel; 2009 NCRR Loan Repayment Review.

*Date:* April 22, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435-0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-1151 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Research Resources; Notice of Closed Meeting

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

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

*Name of Committee:* National Center for Research Resources Initial Review Group; Comparative Medicine Review Committee; CMRC.

*Date:* February 18, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Bonnie B. Dunn, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892-4874, 301-435-0824, [dunnbo@mail.nih.gov](mailto:dunnbo@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure,

93.306, 93.333, National Institutes of Health, HHS)

Dated: January 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-1154 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Closed Meeting

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

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

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA-L Medications Development Conflicts, Special Emphasis Panel.

*Date:* February 12, 2009.

*Time:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1515 Rhode Island, NW., Washington, DC 20005.

*Contact Person:* Scott Chen, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892, 301-402-6020, [chensc@mail.nih.gov](mailto:chensc@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-995 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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

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

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

*Date:* February 11-12, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-496-3528, [gm12w@nih.gov](mailto:gm12w@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-1148 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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

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

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Mechanism of Immunological Tolerance.

*Date:* February 19, 2009.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, DEA, NIAID/NIH/DHHS, 6700-B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892-7616, 301-402-4598, [clapham@niaid.nih.gov](mailto:clapham@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-1156 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings**

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

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

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK-KUH Fellowship Review Committee.

*Date:* February 2, 2009.

*Time:* 10 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4719, [guox@extra.niddk.nih.gov](mailto:guox@extra.niddk.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases and Nutrition Fellowships.

*Date:* February 19, 2009.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, [tathamt@mail.nih.gov](mailto:tathamt@mail.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies in Kidney Diseases.

*Date:* March 2, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, [tathamt@mail.nih.gov](mailto:tathamt@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 13, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-1160 Filed 1-21-09; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**ODS Analytical Methods and Reference Materials Program—Dietary Supplement Element Methodology Workshop; Notice**

Notice is hereby given of the National Institutes of Health (NIH) Office of Dietary Supplements (ODS) Analytical Methods and Reference Materials Program, Dietary Supplement Element Methodology Workshop to be held Monday, March 23rd and Tuesday, March 24th, 2009 at the Marriott Gaithersburg Washingtonian Center Hotel in Gaithersburg, Maryland, 20878.

*Summary:* Late in 2001, the U.S. Congress addressed the need for support of analytical methods and reference materials development related to dietary supplements. The Congressional appropriation language supported an increased ODS budget for several topics, including analytical methods and reference materials. The Senate language called for: "ODS to allocate sufficient funds to speed up an ongoing collaborative effort to develop and disseminate validated analytical methods and reference materials for the most commonly used botanicals and other dietary supplements."

On February 8, 2002, ODS held a public meeting to solicit comments to assist ODS in designing an overall strategy for implementing the Congressional mandate to foster development and validation of analytical methods and reference materials for dietary supplements.

In Fiscal Years 2004 and 2005, Congress again used similar language supporting the Analytical Methods and Reference Materials Program in the ODS appropriations.

On September 10, 2007, ODS held a Stakeholders' Meeting to review the progress that had been made by the Analytical Methods and Reference Materials Program since its inception in 2002 and to receive comments on future programmatic directions.

As a follow-up to the recommendations from the Stakeholders' Meeting, a Vitamin Methodology Workshop was held in July 2008. This workshop sought to evaluate the state of analytical methodology on vitamins suitable for dietary supplements and to identify gaps in the analytical science for the purpose of meeting future methods needs of stakeholders. Results of the Vitamin Methodology Workshop include an executive summary of the

outcome of the workshop (in preparation) as well as recognition of a need for a Dietary Supplement Element Methodology Workshop.

The purpose of this upcoming workshop is to evaluate the state of analytical methods for nutrient and non-nutrient minerals (including toxic elements) in dietary supplement products and to identify gaps in methodology, with a view toward designing a research program to fill the unmet methods needs of stakeholders. The desired outcomes of this meeting are to provide an overview of the status of analytical methodology for elements, to discuss analytical method purpose statements, to discuss the definition and evaluation of a method's purpose, as well as its fitness for purpose.

The sponsor of this meeting is the NIH Office of Dietary Supplements.

#### Registration

Seating at this workshop is very limited. To register please forward your name and complete mailing addresses including phone number via e-mail to Mr. Mike Schultz at [mschultz@csionweb.com](mailto:mschultz@csionweb.com). Mr. Schultz will be coordinating the registration for this meeting. If you wish to make an oral presentation during the meeting, you must indicate this when you register and submit the following information: (1) A brief written statement of the general nature of the comments that you wish to present, (2) the names and addresses of the person(s) who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation. If you don't have access to e-mail please call Mr. Schultz at 301-670-0270.

Dated: January 13, 2009.

#### Paul M. Coates,

Director, Office of Dietary Supplements,  
National Institutes of Health.

[FR Doc. E9-1162 Filed 1-21-09; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2007-28460]

### Long Range Aids to Navigation (Loran-C) Program; Draft Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The Coast Guard announces the availability of a Draft Programmatic Environmental Impact Statement (PEIS) on the Future of the Long Range Aids to Navigation (Loran-C) Program. We request your comments on the Draft PEIS.

**DATES:** Two public meetings concerning the Draft PEIS are planned. The public meetings will be held on February 18, 2009, in Washington, DC and on March 3, 2009, in New Orleans, LA. Comments and related material must reach the Docket Management Facility on or before March 9, 2009.

**ADDRESSES:** The Washington, DC meeting will be held at the Ronald Reagan Building and International Trade Center, Oceanic Rooms A & B, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, telephone 202-312-1326. The New Orleans, LA meeting will be held at the Hilton New Orleans Riverside, Rosedown Room, 2 Poydras Street, New Orleans, LA 70140, telephone 504-556-3739. Each meeting will consist of an informational open house from 4:30 p.m. to 6 p.m. and a public scoping meeting from 6 p.m. to 8 p.m. The public meetings may end later than the stated time, depending on the number of persons wishing to speak.

Send written material or comments you wish to have as part of the meeting record to Department of Homeland Security, U.S. Coast Guard, (CG-54132) Electronic Navigation Branch, 2100 Second Street, SW., Washington, DC 20593-0001, *Attn:* LCDR Robert Manning no later than February 9, 2009.

You may submit comments identified by Coast Guard docket number USCG-2007-28460 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

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

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call

LCDR Robert Manning, (CG-54132) Electronic Navigation Division, U.S. Coast Guard, telephone 202-372-1560, or e-mail [robert.j.manning@uscg.mil](mailto:robert.j.manning@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to submit comments and related material on the Draft PEIS on the Future of the Loran-C Program. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

*Submitting comments:* If you submit a comment, please include the docket number for this notice (USCG-2007-28460), and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. 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 Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

*Viewing the comments and Draft PEIS:* To view the comments and the Draft PEIS, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2007-28460 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 DOT West Building, 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Draft PEIS is also available at the project Web site, <http://www.uscg-e2m.com/LoranPEIS/>.

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

### Background and Purpose

Loran is a radionavigation system first developed during World War II and operated by the USCG. The current system (Loran-C) is a low frequency hyperbolic radionavigation system approved for use in the Coastal Confluence Zone (CCZ) and as a supplemental air navigation aid. Loran-C provides navigation, location, and timing services for both civil and military air, land, and marine users in the continental U.S. (CONUS) and Alaska. The USCG operates 18 CONUS Loran Stations, 6 Alaska Loran Stations, and 24 monitoring sites.

The Draft PEIS on the Future of the Loran-C Program is a program-level document designed to provide the USCG with high-level analysis of the potential impacts on the human environment from the alternatives for the future of the Loran-C Program. The Draft PEIS evaluates the following five alternatives on the future of the USCG Loran-C Program:

- (1) No Action Alternative. The No Action Alternative refers to the current, existing conditions without implementation of the Proposed Action.
- (2) Decommission the USCG Loran-C Program and Terminate the North American Loran-C Signal.
- (3) Automate, Secure, and Unstaff Loran-C Stations.
- (4) Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency.
- (5) Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency to Deploy an eLoran system.

The preferred alternatives include Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency; or Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency to Deploy an eLoran system. It is important to note that this draft PEIS does not obligate the

Coast Guard, DHS, or any other entity to undertake any specific course of action with respect to Loran.

We are requesting your comments on the environmental concerns that you may have related to the Draft PEIS. This includes suggested analyses and methodologies for use in the Draft PEIS or possible sources of data for information not included in the Draft PEIS. Your comments will be considered in preparing the final PEIS.

Dated: December 30, 2008.

**James A. Watson,**

*Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.*

[FR Doc. E9-1171 Filed 1-21-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5279-N-01]

### Notice of Proposed Information Collection: Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Person or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and the Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described in this notice pertains to supplemental information that housing providers participating in federally assisted housing, as defined in this notice, are required to give an individual or family applying for assisted housing the option to provide as part of their application for occupancy. The supplemental information would provide an individual or family applying for assistance under these programs with the option of including in the application for assistance the name, address, phone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization, who is familiar with and may assist with the services and special care needed by the individual or family, and assist in resolving any tenancy issues arising during the tenancy of such tenant. The supplemental information is to be maintained by the housing provider as confidential information. The housing

provider may not require the individual or family applying for occupancy to provide the information. The information collection pertaining to this supplemental information will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* March 23, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail [Lillian\\_L\\_Deitzer@HUD.gov](mailto:Lillian_L_Deitzer@HUD.gov) or telephone 202-402-8048.

### FOR FURTHER INFORMATION CONTACT:

Willie Spearmon, Office of Multifamily Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6134, Washington, DC 20410-8000; telephone 202-708-3000 (this is not a toll-free number). Dina Elani, Office of Public and Indian Housing, 451 7th Street, SW., Room 4224, Washington, DC 20410-4000; telephone number 202-402-2071 (this is not a toll-free number). Persons with hearing or speech disabilities may access both numbers through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in federally assisted housing to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The federally assisted housing programs covered by this notice are listed in the matrix that accompanies this notice.

The objective of providing such information, if the information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any delivery of

services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

While this statutory requirement to notify applicants for occupancy in HUD-assisted housing of the option of providing such information is a long-standing one, HUD has discovered that applicants are not being consistently notified of the option to provide this information. Accordingly, HUD has determined that the best way to ensure that providers of federally assisted housing comply with this requirement is to require compliance through utilization of a standard form for housing providers to give to each applicant for occupancy that notifies them of their option to provide the information specified in section 644 of the Housing and Community Development Act of 1992, and provides for the information to be submitted. The standard form that HUD proposes for housing providers to use accompanies this notice.

**II. Proposed Information Collection**

To facilitate compliance with section 644 of the Housing and Community Development Act of 1992, HUD has

designed a form that housing providers are required to provide to each applicant for occupancy that (1) notifies an applicant of the applicant's option to provide the information specified in section 644 of the Housing and Community Development Act of 1992, (2) provides for the information to be submitted, and (3) advises of the confidentiality of the information included on the form. This notice provides a listing and description of that information, as well as a sample document (that is a sample of the document in which required information may be presented to HUD), and HUD is submitting the proposed information collection to OMB, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and is seeking review as allowed by the Paperwork Reduction Act of 1995.

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

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

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

(4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Title of Proposal:* Supplemental and Optional Contact Information for HUD-Assisted Housing Occupants.

*OMB Control Number, if applicable:* Pending.

*Description of the need for the information and proposed use:* HUD is proposing this information collection to ensure compliance with section 644 of the Housing and Community Development Act of 1992, as discussed in section I of this notice.

*Agency form numbers, if applicable:* HUD-Form 92006 (SAFAH).

*Frequency of Submission:* Once with each application for occupancy in a HUD-assisted housing project, at the applicant's option.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.*

Information to be collected is supplemental and optional contact information under the following programs	Number of respondents *	Number of responses per respondent	Estimated average time for requirement (in minutes)	Estimated annual burden (in hours)
Public Housing .....	98,906	1	.15	14,835.90
Tenant-Based Rental Vouchers .....	188,898	1	.15	28,334.70
Section 202 Project Rental Assistance Contracts (PRAC) .....	17,852	1	.15	2,677.80
Section 811 Project Rental Assistance Contracts (PRAC) .....	5,968	1	.15	895.20
Section 202/162 Project Assistance Contract (PAC) .....	197	1	.15	29.55
Section 8 Project-Based .....	230,910	1	.15	34,636.50
Section 236 .....	7,504	1	.15	1,125.60
Section 221(d)(3) Below Market Interest Rate (BMIR) .....	499	1	.15	74.85
Rent Supplement .....	831	1	.15	124.65
Rental Assistance Payment (RAP) .....	1,143	1	.15	171.45
<b>Totals .....</b>	<b>552,708</b>	<b>.....</b>	<b>.....</b>	<b>82,906.20</b>

\*NOTE: The number of respondents is the estimated number of total new admissions in the covered programs, and therefore the total number of potential respondents. However, not all newly admitted individuals and families may choose to complete Supplemental and Optional Contact Information for HUD-Assisted Housing Occupants.

*Status of the proposed information collection:* Pending OMB approval.

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

Dated: January 13, 2009.

**Ronald A. Spraker,**

*General Deputy Assistant, Secretary for Housing—General Deputy, Federal Housing Commissioner.*

OMB Control # 2502-xxxx

Exp. (xx/xx/xxxx)

**Attachment A**

Supplemental and Optional Contact Information for HUD-Assisted Housing Occupants

**Supplement to Application for Federally Assisted Housing**

This Form Is To Be Provided to Each Applicant for Federally Assisted Housing

Applicant Name:

Mailing Address:

Telephone No:

Optional Contact Person or Organization: You have the right by law to include, at your option and as part of your application for housing, the name, address, telephone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization. If you choose to exercise this option, please include the relevant information on this form.

Name of Additional Contact Person or Organization:

Relationship, if any, if individual is identified:

Address:

Telephone No:

E-mail address (if applicable) or other contact information:

Commitment of Housing Provider: If the applicant becomes a tenant of the federally assisted housing for which the applicant is providing, the information on this form shall be maintained during the period of the tenant's occupancy in federally assisted housing for the purpose of facilitating contact with such additional contact person or organization to assist in providing any services or special care for the tenant and to assist in resolving any relevant tenancy issues arising during the tenancy of such tenant.

Confidentiality Statement: The information provided on this form is confidential information and will not be disclosed to anyone else except as permitted by the applicant or applicable law.

Legal Notification: The option of an applicant to provide information regarding an additional contact person or organization is required to be offered to each applicant for federally assisted housing by section 644 of the Housing and Community Development Act of 1992 (Pub. L. 102-55, approved October 28, 1992). The housing provider accepting the applicant's application for assistance does not discriminate on the basis of race, sex, age, color, creed, religion, handicap, national origin, family composition or familial status in admission to, or participation in its federally assisted housing programs.

The information collection requirements contained in this form were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The public reporting burden is estimated at 15 minutes per response. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

HUD-Form 92006

SAFAH

[FR Doc. E9-1165 Filed 1-21-09; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-09-1310-FI; COC69437]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC69437 from Westcliff Resources, LLC, for lands in Rio Blanco County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303-239-3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC69437 effective August 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: January 14, 2009.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E9-1188 Filed 1-21-09; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-09-1310-FI; COC66236]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC66236 from Red Willow Production, LLC., for lands in Jackson County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303-239-3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC66236 effective September 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: January 14, 2009.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E9-1189 Filed 1-21-09; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-09-1310-FI; COC69412]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC69412 from the following companies: (1) Whiting Oil & Gas Corp.,

(2) Williams Prod Ryan Gulch, LLC, for lands in Rio Blanco County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303-239-3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC69412 effective August 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: January 14, 2009.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E9-1190 Filed 1-21-09; 8:45 am]

BILLING CODE 4310-JB-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-923-1310-FI; WYW174048]

#### Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Red River Oil and Gas, LLC for competitive oil and gas lease WYW174048 for land in Carbon County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid

Minerals Adjudication, at (307) 775-6176.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year, and 16 $\frac{2}{3}$  percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW174048 effective August 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

**Julie L. Weaver,**

*Acting Chief, Branch of Fluid Minerals Adjudication.*

[FR Doc. E9-1201 Filed 1-21-09; 8:45 am]

BILLING CODE 4310-22-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-956-1420-BJ-TRST; Group No. 193, Minnesota]

#### Eastern States: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plat of survey; Minnesota.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

**SUPPLEMENTARY INFORMATION:** This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

#### Fourth Principal Meridian, Minnesota

T. 43 North, R. 27 West

The plat of survey represents the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the subdivision of section 33, and the reestablishment of the record meander lines in section 33, in Township 43 North, Range 27 West, of the Fourth Principal Meridian, in the

State of Minnesota, and was accepted January 9, 2009. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 12, 2009.

**Dominica Van Koten,**

*Chief Cadastral Surveyor.*

[FR Doc. E9-1185 Filed 1-21-09; 8:45 am]

BILLING CODE 4310-GJ-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-582]

#### In the Matter of: Certain Hydraulic Excavators and Components Thereof General Exclusion Order

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) based on the unlawful importation and sale of certain hydraulic excavators that infringe United States Trademark Registration Nos. 2,140,606; 2,241,077; 2,140,605 and 2,448,848, which cover the "CAT" and "Caterpillar" marks.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary because there is a pattern of violation of section 337 and it is difficult to identify the source of the infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing gray market hydraulic excavators bearing the trademarks at issue.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Accordingly, the Commission hereby orders that:

(1) Hydraulic excavators manufactured by or under authority of Caterpillar Inc. for sale and use outside the North America Commercial Division (United States and Canada) which (a) bear one or more of the following U.S. Trademark Reg. Nos. 2,140,605; 2,140,606; 2,421,077; and 2,448,848 and (b) are materially different from hydraulic excavators manufactured by or under authority of Caterpillar Inc. for sale and use in the United States, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from warehouse for consumption, except if imported by, under license from, or with the permission of the trademark owner, or as provided by law, until such date as the trademarks are abandoned, canceled, or rendered invalid or unenforceable. This paragraph shall apply to hydraulic excavators exported, shipped, sold, purchased, or imported by any and all persons, including authorized Caterpillar dealers.

(2) Notwithstanding paragraph 1 of this Order, the aforesaid hydraulic excavators excludable under paragraph 1 of this Order are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337(j)), and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 FR 43251) from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this Order.

(3) In accordance with 19 U.S.C. 1337(l), the provisions of this Order shall not apply to hydraulic excavators bearing the asserted trademarks that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

(4) Complainant Caterpillar Inc. shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Caterpillar Inc. continues to use each of the aforesaid trademarks in commerce in the United States in connection with hydraulic excavators, whether any of the aforesaid trademarks has been

abandoned, canceled, or rendered invalid or unenforceable, and whether Caterpillar Inc. continues to satisfy the economic requirements of section 337(a)(2).

(5) The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.76).

(6) The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs and Border Protection.

(7) Notice of this Order shall be published in the **Federal Register**.

(8) At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import hydraulic excavators that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraphs 1 through 7 of this Order. At its discretion, Customs may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

By Order of the Commission.

Issued: January 14, 2009.

**Marilyn R. Abbott**,

*Secretary to the Commission.*

[FR Doc. E9-1092 Filed 1-21-09; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-09-002]

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** January 27, 2009 at 9:30 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-1140 (Final) (Uncovered Innerspring Units from

China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 11, 2009.)

5. Outstanding action jackets: none  
In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: January 15, 2009.

**William R. Bishop**,

*Hearings and Meetings Coordinator.*

[FR Doc. E9-1213 Filed 1-21-09; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9622, the Department of Justice gives notice that, on January 6, 2009, a proposed Consent Decree (the Decree) in *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812, and *New Jersey Department of Environmental Protection, et al. v. American Thermoplastics Corp., et al.*, Civil Action No. 98-CV-4781, was lodged with the United States District Court for the District of New Jersey. The Decree addresses recovery of response costs incurred or to be incurred and natural resource damages at the Combe Fill South Landfill Superfund Site (the Site), located in Washington and Chester Townships in Morris County, New Jersey. In these consolidated cases, the United States and the New Jersey Department of Environmental Protection brought civil claims against 31 potentially responsible parties (PRPs) under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs at the Site. The State Plaintiffs also brought civil claims in connection with the Site under the New Jersey Spill Compensation and Control Act (the Spill Act), N.J.S.A. 58:10-23 *et seq.*, and other authorities, for response costs and natural resource damages. Defendants subsequently filed contribution claims against 382 third-parties.

Under the proposed Decree, Plaintiffs will receive: (1) \$61-\$69 million (depending on how many Municipal Third-Party Defendants enter into the

settlement prior to entry of the Decree by the Court), including \$6.4 million from federal departments and agencies, in reimbursement of past costs, with interest on that entire past costs amount payable from December 8, 2007 through the date of payment; (2) \$3,218,700 for natural resource damage (NRD) restoration projects; and (3) an annuity paying \$27 million over thirty years for cleanup and operation and maintenance (O&M) costs to be incurred at the Site in connection with the remedy. In addition, Plaintiffs will recover the net proceeds of contribution actions against non-settling parties.

There have been two prior settlements in these cases. In 2003, in two *de minimis* consent decrees, Plaintiffs resolved the liability of 58 *de minimis* parties for response costs for \$3.26 million and resolved the liability of a subset of those parties for NRD for \$302,000. Subsequently, in 2005, Plaintiffs entered into an ability-to-pay settlement with former Site owners and transporters for \$13,047,121.50.

This Decree does not select the remedy or determine future uses at the Site. Rather, the settlement provides, in part, continued funding for the remedy selected in the 1986 Site Record of Decision. The Decree also provides settling parties a Covenant Not to Sue by the Plaintiffs pursuant to CERCLA and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 9673, for all costs and remedial activities at the Site. The State Plaintiffs similarly provide a Covenant Not to Sue pursuant to the Spill Act and other authorities. In the event new information or conditions are discovered, the Covenants are subject to a reopener against parties specified in the Decree believed to have sent higher volumes of waste to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to United States Department of Justice, Post Office Box 7611, Washington, DC 20044-7611, and should refer to *United States v. Beckman Coulter, Inc., et al.*, Civil Action No. 98-CV-4812, and DOJ Reference No. 90-11-2-1134/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). The proposed Decree may be examined at: (1) The Office of the

United States Attorney for the District of New Jersey, 970 Broad Street—Room 700, Newark, New Jersey 07102 (973-645-2700); and (2) the United States Environmental Protection Agency—Region II, 290 Broadway—17th Floor, New York, New York 10007 (contact: William C. Tucker, Assistant Regional Counsel, 212-637-3139).

During the public comment period, the proposed Decree may also be examined at the Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, United States Department of Justice, Post Office Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)) (fax 202-514-0097, phone confirmation 202-514-1547). In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check for \$59.25 for the Decree (237 pages including Appendices, at 25 cents per page reproduction costs), made payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Ronald G. Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-1147 Filed 1-21-09; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on January 12, 2009, a proposed Consent Decree (the "Consent Decree") in *United States v. Shell Chemical Yabucoa, Inc.*, Civil Action No. 3:09-cv-1019 was lodged with the United States District Court for the District of Puerto Rico.

In a complaint, filed simultaneously with the Decree, the United States alleges that Shell Chemical Yabucoa, Inc. ("Shell") violated the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the "Act") at its facility in Yabucoa, Puerto Rico ("Facility") by discharging pollutants in excess of effluent limitations contained in its National Pollutant Discharge Elimination System ("NPDES") Permit No. PR0000400, by discharging effluent from unpermitted discharge points as a result of two pipeline ruptures, by discharging unauthorized pollutants from a permitted discharge point, by failing to report violations, and by

failing to provide adequate operation and maintenance at the Facility as required by NPDES Permit No. PR0000400.

The Consent Decree requires Shell to implement injunctive relief to bring the Facility into compliance with the Act, including to install and operate a rain gauge at the Facility, to collect, measure, and maintain records of the rainfall received at the Facility; to conduct maintenance of the Facility's flood control pond to minimize discharges of storm water from the Facility; and to conduct several studies and implement compliance measures to reduce the concentration of pollutants contained in the Facility's storm water discharges. The Facility currently is not conducting any petrochemical production operations, but if the Facility initiates production operations at any time before the Consent Decree terminates, which is estimated to be in approximately 3 years, Shell must design, construct and operate a storm water storage facility that provides for the temporary storage of at least 1.34 million gallons of storm water. The Consent Decree also requires Shell to pay a \$1,025,000 civil penalty to the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, United States Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Shell Chemical Yabucoa, Inc.*, D.J. Ref. 90-5-1-1-08400.

The Consent Decree may be examined at the Office of the United States Attorney, Torre Chardón, Room 1201, 350 Chardón Street, San Juan, Puerto Rico 00918, and at U.S. EPA Region 2, Office of Regional Counsel, 290 Broadway, New York, New York 10007-1866. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of

\$16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9-1155 Filed 1-21-09; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on September 18, 2008, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the Phenylacetone to manufacture Amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than February 23, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted

in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 14, 2009.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E9-1198 Filed 1-21-09; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated October 9, 2008 and published in the **Federal Register** on October 17, 2008 (73 FR 61909), Noramco Inc., Division of Ortho McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801-4417, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Codeine-N-oxide (9053) .....	I
Dihydromorphine (9145) .....	I
Morphine-N-oxide (9307) .....	I
Methylphenidate (1724) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Hydrocodone (9193) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Opium extracts (9610) .....	II
Opium fluid extract (9620) .....	II
Opium tincture (9630) .....	II
Opium, powdered (9639) .....	II
Opium, granulated (9640) .....	II
Oxymorphone (9652) .....	II

The company plans to bulk manufacture the above listed controlled substances for sale and distribution to manufacturers for product development and formulation.

Drug code 1726 (methylphenidate) has been withdrawn from the application for registration as all

manufacturing activity for methylphenidate can be conducted under drug code 1724 for the same substance.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 14, 2009.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E9-1196 Filed 1-21-09; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated September 8, 2008, and published in the **Federal Register** on September 15, 2008 (73 FR 53280), Chatten Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4-Methoxyamphetamine (7411) ...	I
Dihydromorphine (9145) .....	I
Difenoxin (9168) .....	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Lisdexamfetamine (1205) .....	II
Methylphenidate (1724) .....	II
Pentobarbital (2270) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Hydrocodone (9193) .....	II
Meperidine (9230) .....	II

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300) .....	II
Oripavine (9330) .....	II
Thebaine (9333) .....	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Alfentanil (9737) .....	II
Remifentanyl (9739) .....	II
Sufentanil (9740) .....	II
Fentanyl (9801) .....	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 14, 2009.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E9-1199 Filed 1-21-09; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

January 14, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden

may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503. *Telephone:* 202-395-7316/*Fax:* 202-395-6974 (these are not toll-free numbers), *E-mail:* [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see below*).

*The OMB is particularly interested in comments which:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Extension without change of an existing OMB Control Number.

*Title of Collection:* Job Openings and Labor Turnover Survey (JOLTS).

*OMB Control Number:* 1220-0170.

*Affected Public:* Private Sector (Business and other for-profits and Not-for-profit institutions); State, Local, or Tribal Governments; and Federal Government.

*Total Estimated Number of Respondents:* 11,138.

*Total Estimated Annual Burden Hours:* 22,176.

*Total Estimated Annual Costs Burden:* \$0.

*Description:* The Job Openings and Labor Turnover Survey (JOLTS) collects data on job vacancies, labor hires, and labor separations. The data can be used as demand-side indicators of labor

shortages. These indicators of labor shortages at the national level greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no other economic indicator of labor demand with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs is an important measure of tightness of job markets, symmetrical to unemployment measures. For additional information, see related notice published at Vol. 73 FR. 62325 on October 20, 2008.

**Darrin A. King,**

*Departmental Clearance Officer.*

[FR Doc. E9-1207 Filed 1-21-09; 8:45 am]

BILLING CODE 4510-24-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before February 23, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is

completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740-6001.

*E-mail:* [request.schedule@nara.gov](mailto:request.schedule@nara.gov).

*FAX:* 301-837-3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:**

Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

*Telephone:* 301-837-1539. *E-mail:* [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their

administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Defense, Defense Finance and Accounting Service (N1-507-09-1, 1 item, 1 temporary item). Master files of an electronic information system containing data concerning agency employees, contractors, assets, and other information needed for potential disaster response and recovery.

2. Department of the Interior, National Park Service (N1-79-08-5, 4 items, 2 temporary items). Records relating to interpretation and education programs that do not meet the criteria for permanent retention specified in the schedule. Proposed for permanent retention are records that document planning and development of interpretation and education policies, programs and activities, and final work products such as publications, presentations, exhibit scripts, audio-visual materials, studies, lesson plans and curricula.

3. Department of the Interior, National Park Service (N1-79-08-9, 5 items, 4 temporary items). Records relating to management and accountability activities that do not meet the criteria for permanent retention specified in the schedule. Proposed for permanent retention are records that document agency direction including the creation of policy and procedures, documentation of social issues affecting agency services, creation of the annual budget, strategic planning, annual

reporting, agency achievements that contribute to its history, first of a kind or precedent-setting activities, and activities that are the subject of widespread media attention or congressional scrutiny.

4. Department of Justice, Office of Legislative Affairs (N1-60-08-26, 3 items, 2 temporary items). Case files relating to officials requiring Senate confirmation whose nominations are withdrawn as well as case files relating to individuals nominated for positions below the level of Assistant Attorney General. Proposed for permanent retention are files relating to individuals nominated for positions at the Assistant Attorney General level and higher.

5. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1-436-08-6, 5 items, 3 temporary items). Records of the Office of Chief Counsel consisting of attorney work papers, files relating to routine legal matters, and the case management system. Proposed for permanent retention are files relating to significant legal matters and the Chief Counsel Document System.

6. Department of Justice, Federal Bureau of Investigation (N1-65-07-4, 8 items, 7 temporary items). Training records of the Training and Development Division and individual units throughout the Bureau consisting of recorded exercises, homework exercises, logbooks of completed probationary assignments, dismissal packages, advanced law enforcement training for non-FBI law enforcement officials, and general training records for non-law enforcement training. Proposed for permanent retention are training policy files. Not included in this schedule are records documenting the training curriculum and training program for new and experienced agents.

7. Department of the Navy, Naval Criminal Investigative Service (N1-NU-09-3, 1 item, 1 temporary item). Background investigations on applicants for positions as special agents. These records were previously approved for disposal.

8. Department of State, Bureau of Diplomatic Security (N1-59-08-18, 10 items, 7 temporary items). Records of the Personnel Security/Suitability Division, including the master files of a security clearance database and contractors' payment records. Proposed for permanent retention are master files from the security clearance database that cover high-level officials and other cases that are historically significant and records related to program management and policy development.

9. Department of State, Overseas Building Operations (N1-59-09-5, 31 items, 31 temporary items). Records relating to the construction and maintenance of overseas facilities, including policy and procedures files, trip reports, Inspector General records, budget files, roof drawings, facility evaluations, reports relating to asbestos, and other records relating to maintenance activities.

10. Department of Transportation, Federal Highway Administration (N1-406-08-2, 16 items, 14 temporary items). Records of the Office of Safety, including administrative files, budget files, cooperative agreement files, evaluation reports received from states, general correspondence, working papers, accident files, drafts of proposals, research files, and training course files. Proposed for permanent retention are interpretations of regulations and roadside hardware acceptance letters.

11. Department of Transportation, Surface Transportation Board (N1-134-08-1, 59 items, 41 temporary items). Records of the Surface Transportation Board, including news clippings, non-significant ex parte dockets, service docket files, reference files, working papers, reports review correspondence, carrier report publications, rate adjustment files, cost studies, docket working files, internal correspondence files, legislative files, congressional correspondence, decision reference files, hearing files, court files, project files, environmental assessments and impact statements, diagram maps, abandonment submissions, **Federal Register** citation files, designated agents files, court cases index file, practitioner files, fees refund files, recordation files, rate bureau agreements, and official tariff files. Proposed for permanent retention are such records as Board conference tapes, significant ex parte dockets, formal rail dockets, formal water carrier dockets, board member speeches, General Counsel's numbered memoranda, reports and studies, clearances for docketed and undocketed proceedings, background files for docketed and undocketed proceedings, carrier annual reports, waybill public use files and documentation, and public dockets.

12. Department of the Treasury, Office of Thrift Supervision (N1-483-08-2, 11 items, 10 temporary items). Electronic information systems used in connection with financial, budgetary, and billing activities. Also included are Web site and intranet records and electronic systems that support examination, supervision, and compliance activities. Proposed for permanent retention is a

risk exposure analysis and reporting system used to create rate risk reports.

13. Environmental Protection Agency, Agency-wide (N1-412-07-62, 7 items, 7 temporary items). Appointee clearance and vetting files, Intergovernmental Personnel Act assignment files, personnel files of Public Health Service personnel temporarily assigned to the agency, and other non-mission related files. Paper copies of these files were previously approved for disposal.

14. Environmental Protection Agency, Agency-wide (N1-412-07-63, 6 items, 6 temporary items). Safety standards files, property safety inspections, protective and preventive measures report files, and industrial hygiene files, including employee exposure records and asbestos monitoring records. Paper copies of these files were previously approved for disposal.

15. Environmental Protection Agency, Agency-wide (N1-412-07-64, 4 items, 4 temporary items). Procurement and grant records, including administrative reports and data relating to procurement operations, deviation requests, and recipient and contractor debarment and suspension records. Paper copies of these files were previously approved for disposal.

16. Environmental Protection Agency, Agency-wide (N1-412-07-65, 12 items, 12 temporary items). Facilities and support services records, including guard service performance records, personal property records, motor vehicle leases, real estate project requests, real property records, and surplus real property case files. Paper copies of these files were previously approved for disposal.

17. Railroad Retirement Board, Office of Administration (N1-184-08-2, 2 items, 2 temporary items). Administrative records relating to the agency's participation in the Combined Federal Campaign.

Dated: January 15, 2009.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. E9-1374 Filed 1-21-09; 8:45 am]

**BILLING CODE 7515-01-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **Sunshine Act; Notice of Agency Meeting**

**TIME AND DATE:** 10 a.m., Thursday, January 22, 2009.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

#### **MATTERS TO BE CONSIDERED:**

1. Final Rule—Section 740.4 of NCUA's Rules and Regulations, Requirements for the Official Sign.

2. Public Notice—Central Liquidity Facility.

3. Insurance Fund Report.

**RECESS:** 11 a.m.

**TIME AND DATE:** 11:15 a.m., Thursday, January 22, 2009.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

#### **MATTERS TO BE CONSIDERED:**

1. Appeal under section 701.14 and Part 747, Subpart J of NCUA's Rules and Regulations. Closed pursuant to Exemptions (6) and (8).

2. Personnel. Closed Pursuant to Exemption (2).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703-518-6304

**Mary Rupp,**

*Board Secretary.*

[FR Doc. E9-1312 Filed 1-16-09; 11:15 am]

**BILLING CODE 7535-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Sunshine Federal Register Notice**

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of January 19, 26, February 2, 9, 16, 23, 2009

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### **Week of January 19, 2009**

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**

*Wednesday, February 4, 2009*

1:30 p.m. Briefing on Risk-Informed, Performance-Based Regulation (Public Meeting)  
(Contact: Gary Demoss, 301-251-7584).

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov)

*Thursday, February 5, 2009*

9:30 a.m. Briefing on Uranium Enrichment—Part 1 (Public Meeting).

1:30 p.m. Briefing on Uranium Enrichment—Part 2 (Public Meeting).  
(Contact for both parts: Brian Smith, 301-492-3137)

Both parts of this meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov)

3 p.m. Briefing on Uranium Enrichment (Closed—Ex. 1).

#### Week of February 9, 2009—Tentative

There are no meetings scheduled for the week of February 9, 2009.

#### Week of February 16, 2009—Tentative

There are no meetings scheduled for the week of February 16, 2009.

#### Week of February 23, 2009—Tentative

There are no meetings scheduled for the week of February 23, 2009.

\* \* \* \* \*

\*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.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: [www.nrc.gov/about-nrc/policy-making/schedule.html](http://www.nrc.gov/about-nrc/policy-making/schedule.html)

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at [rohn.brown@nrc.gov](mailto: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](mailto:darlene.wright@nrc.gov).

January 15, 2009.

**Rochelle C. Bavol,**

*Office of the Secretary.*

[FR Doc. E9-1370 Filed 1-16-09; 11:15 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28581; 812-13523]

### Allstate Financial Investment Trust, et al.; Notice of Application

January 12, 2009.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

#### *Summary of the Application:*

Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

*Applicants:* Allstate Financial Investment Trust (“Trust”) and Allstate Institutional Advisers, LLC (“Adviser”).

*Filing Dates:* The application was filed on April 18, 2008 and amended on October 14, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*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 February 6, 2009, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–

1090; Applicants, c/o Renee M. Hardt, Vedder Price P.C., 222 N. LaSalle Street, Chicago, IL 60601.

#### **FOR FURTHER INFORMATION CONTACT:**

Keith A. Gregory, Senior Counsel, at (202) 551-6815, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (telephone (202) 551-5850).

#### **Applicants’ Representations**

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is a series trust which currently offers eight series, each of which has its own investment objectives and policies (“Funds”).<sup>1</sup>

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and serves as investment adviser to the Funds. The Adviser is a wholly-owned subsidiary of Allstate Life Insurance Company, which is an indirect, wholly-owned subsidiary of The Allstate Corporation. The Adviser currently employs AllianceBerstein L.P. to manage the Funds of Funds (as defined below) and Allstate Investment Management Company (“AIMCO”), an affiliate of the Adviser, to manage the Allstate Large Cap Index, a Fund of the Trust. AllianceBernstein L.P. and AIMCO are, and any future subadviser will be, registered under the Advisers Act.

3. Applicants request relief to permit: (a) A Fund (each a “Fund of Funds”) to acquire shares of registered open-end management investment companies (the “Unaffiliated Investment Companies”) and unit investment trusts (“UITs”) that are not part of the “same group of investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (“Unaffiliated Trusts,”

<sup>1</sup> Applicants request that the order extend to any future series of the Trust, and any other existing or future registered open-end management investment companies and their series that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (included in the term, “Funds”). The Trust is the only registered investment company that currently intends to rely on the requested order. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

together with the Unaffiliated Investment Companies, the “Unaffiliated Funds”); (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (“Broker”) to sell shares of the Unaffiliated Funds to the Fund of Funds; (c) the Fund of Funds to acquire shares of Allstate Large Cap Index Fund and other Funds in the “same group of investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (collectively, the “Affiliated Funds,” and together with the Unaffiliated Funds, the “Underlying Funds”); and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Fund of Funds. Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices (“ETFs”). Each Fund of Funds also may invest in other securities and financial instruments that are not issued by registered investment companies and are consistent with its investment objective and restrictions.

### Applicants’ Legal Analysis

#### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company’s voting stock, or if the sale will cause more than 10% of the acquired company’s voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public

interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(f) of the Act to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds’ investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants submit that: (a) The Adviser and any person controlling, controlled by or under common control with the Adviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the “Group”), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (“Sub-Adviser”) and any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the “Sub-Adviser Group”) will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 below precludes a Fund of Funds or the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, and any person

controlling, controlled by, or under common control with any of those entities (each, a “Fund of Funds Affiliate”) from taking advantage of an Unaffiliated Fund with respect to transactions between a Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter and principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an “Unaffiliated Fund Affiliate”). No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, advisory board member, investment adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-Adviser, member of an advisory board, or employee is an affiliated person (each, an “Underwriting Affiliate,” except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an “Affiliated Underwriting.”

6. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds’ investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees (“Boards”) and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (“Participation Agreement”). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.<sup>2</sup>

<sup>2</sup> An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees") will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in Rule 2830 of the Conduct Rules of the NASD.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 12 below. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including, but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

#### B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated persons of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or

Fund of Funds in excess of limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and the Underlying Funds may be deemed to be affiliated persons of each other if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.<sup>3</sup>

2. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that the proposed transactions satisfy the requirements for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.<sup>4</sup> Applicants also state

<sup>3</sup> Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e) of the Act. The Participation Agreement also will include this acknowledgement.

<sup>4</sup> Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated

that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated

Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Unaffiliated Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these procedures periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of

comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the (a) party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated

Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a)

receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-1083 Filed 1-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [74 FR 1734, January 13, 2009].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, January 15, 2009 at 1 p.m.

**CHANGE IN THE MEETING:** Additional Item.

The following item has been added to the Thursday, January 15, 2009 Closed Meeting agenda:

A matter related to a financial institution.

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. 552(b)(7), (8) (9)(B) and 17 CFR 200.402(a)(7), (8) and (9)(B) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: January 15, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-1241 Filed 1-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59250; File No. SR-ISE-2008-90]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Alternative Primary Market Makers

January 14, 2009.

#### I. Introduction

On November 21, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the introduction of Alternative Primary Market Makers ("Alternative PMMs") on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 15, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend ISE Rule 802 to provide for Alternative PMMs. Currently, when the ISE lists new options classes, it allocates them to one of its Primary Market Makers ("PMMs") under ISE Rule 802. Pursuant to power delegated to the Board, an Allocation Committee, which consists of representatives of Electronic Access Members, makes allocation decisions according to the guidelines contained in ISE Rule 802. Under ISE Rule 802, allocations are voluntary.<sup>4</sup> To better enable the Exchange to list and retain options classes that PMMs do not wish

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59053 (December 4, 2008), 73 FR 76078 (the "Notice").

<sup>4</sup> According to ISE, at times, the Exchange is unable to list new products because existing PMMs are not interested in trading the options class. At other times, ISE must delist certain products due to lack of PMM interest. ISE represents that this occurs most frequently with respect to options on stocks that have pending corporate actions and options products that are not listed at any other options exchange. ISE believes that despite the lack of PMM interest, these products may be of interest to other market making firms at the Exchange.

to trade, ISE proposes to appoint Competitive Market Makers ("CMMs") that meet certain qualifications as Alternative PMMs when none of the PMMs want an allocation.<sup>5</sup>

Under the proposal, if no PMMs or Second Market PMMs (as applicable) want the allocation, the Alternative PMMs would be offered the opportunity to serve as PMM in the options class in accordance with the Exchange's regular allocation procedures. Once appointed to an options class, the Alternative PMM would have all of the responsibilities and privileges of a PMM under the ISE Rules with respect to all appointed options classes.<sup>6</sup> If an Alternative PMM ceases trading of an options class, that options class will be reallocated by the Exchange. An Alternative PMM will not have any transferable rights in options classes to which it is appointed nor will it have any PMM voting rights.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that an exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, which is intended to allow the Exchange to allocate more new products and to facilitate the continued listing of existing products, is consistent with the Act. The Commission believes that the introduction of Alternative PMMs on

<sup>5</sup> Only CMMs that own or lease CMM Rights shall be eligible to be appointed as an Alternative PMM. That is, Electronic Access Members acting as market makers in the Second Market will not be eligible to be appointed as Alternative PMMs.

<sup>6</sup> For example, Alternative PMMs would enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the options class to which the Alternative PMM is appointed, and the obligation to conduct the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that options class.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the Exchange should add liquidity to the market in the options classes that PMMs on the Exchange decline to seek an allocation, and therefore should provide trading opportunities that should benefit all market participants. In addition, the Commission notes that Alternative PMMs will have all of the responsibilities and all of the privileges of a PMM under the ISE's rules with respect to all appointed options classes.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-ISE-2008-90) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-1230 Filed 1-21-09; 8:45 am]  
BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59097; File No. SR-FINRA-2008-057]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References and Make Other Various Non-Substantive Technical Changes to FINRA Rules

##### Correction

In notice document E8-30319 beginning on page 78412 in the issue of Monday, December 22, 2008, make the following correction:

On page 78412, the subject should read as set forth above.

[FR Doc. Z8-30319 Filed 1-21-09; 8:45 am]  
BILLING CODE 1505-01-D

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59247; File No. SR-Phlx-2008-87]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Phlx Fee Schedule

January 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 31, 2008, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; Summary of Index Option Charges; and Summary of U.S Dollar-Settled Foreign Currency Option Charges fee schedules. Specifically, the Exchange proposes to assess an option transaction charge of \$0.08 per contract side for specialists and Registered Options Traders (“ROT’s”), including Streaming Quote Traders (“SQT’s”) and Remote Streaming Quote Traders (“RSQT’s”) on contracts that are executed electronically as part of a Complex Order<sup>5</sup> in equity options on the Exchange's electronic trading platform for options, Phlx XL.<sup>6</sup> Market participants other than specialists and ROTs would be assessed the applicable current equity options transaction charge.

The Exchange proposes to assess any applicable option transaction charges to participants, including specialists and ROTs, on contracts in Index Options

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>4</sup> An RSQT is an ROT and participant in the Exchange's electronic trading system, “Phlx XL” who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned. See Exchange Rule 1014(b)(ii)(B).

<sup>5</sup> A Complex Order is composed of two or more option components and is priced as a single order (a “Complex Order Strategy”) on a net debit or net credit basis. See Exchange Rule 1080, Commentary .08. For a complete description of the Exchange's Complex Order System, see Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

<sup>6</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

and U.S. Dollar-Settled Foreign Currency Options that are executed electronically as part of a Complex Order.<sup>7</sup>

This proposal is effective upon filing and will be implemented for transactions settling on or after January 2, 2009.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to provide an incentive for specialists and ROTs to provide liquidity in Complex Orders sent to the Exchange for execution, and to enhance Exchange revenues, by assessing an equity option transaction charge of \$0.08 per contract side for specialists and ROTs instead of the current applicable charges that apply to simple option transactions in equity options.<sup>8</sup> Respecting Complex Orders in equity options for other market participants, the equity option transaction charges in effect on the Exchange for simple orders would be assessed.

Respecting Complex Orders in index and foreign currency options, the index option and foreign currency option

<sup>7</sup> This proposal and the Exhibits attached hereto include amendments to the Exchange's fee schedule that were submitted on December 30, 2008 as part of SR-Phlx-2008-86. Beginning with transactions settling on or after January 2, 2009, the Exchange will assess an option transaction charge of \$0.22 per contract for ROTs, \$0.24 per contract for Firms that submit proprietary orders, and \$0.14 for Firm facilitation orders. The Commission notes that the preceding sentence refers to the “Summary of Equity Option, and MNX, NDX, RUT and RMN Charges” on the fee schedule as amended by File No. Phlx-2008-86.

<sup>8</sup> The Commission notes that prior to this filing, Phlx did not assess transaction charges for Complex Orders.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

transaction charges in effect on the Exchange for simple orders would be assessed on all participants.

Pursuant to this proposal, the Exchange intends to amend the Exchange's: (i) Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; (ii) Summary of Index Option Charges; and (iii) Summary of U.S Dollar-Settled Foreign Currency Option Charges.

Currently, the Exchange does not assess transaction charges for Complex Orders. The Exchange believes that the \$0.08 transaction charge for Complex Orders in equity options (as opposed to the transaction charges for simple orders) should provide incentives for specialists and ROTs to provide liquidity in the Exchange's markets for Complex Orders in equity options.

Summary of Equity Option, and MNX, NDX, RUT and RMN Charges

Currently, the Exchange assesses various option transaction charges for equity options, depending on such factors as the category of person(s) submitting orders for execution (*e.g.*, customers, specialists, broker-dealers, ROTs and Firms are all charged differently, on a per contract basis, ranging from \$0.00 per contract to \$0.45 per contract) and the manner in which the order is delivered to the Exchange. For example, broker-dealer orders submitted electronically to the Exchange's systems are charged \$0.45 per contract, whereas broker-dealer orders submitted through means other than the Exchange's electronic system are charged \$0.25 per contract. Customers submitting orders in equity options are generally not charged transaction fees<sup>9</sup> whereas ROTs and Firms are charged.

The Exchange proposes to amend the fee schedule to assess specialists and ROTs an option transaction charge of \$0.08 per contract side on contracts in equity and MNX, NDX, RUT and RMN options that are executed electronically as part of a Complex Order. Participants other than specialists and ROTs would be assessed the regular equity option transaction charge applicable to simple equity option orders.

Summary of Index Option Charges

The Exchange assesses an option transaction charge for index option

<sup>9</sup> Customers are charged \$0.12 per contract for executions in MNX and NDX options. The Commission notes that the Phlx fee schedule also provides for a \$0.12 per contract charge for customer executions in RUT and RMN. See Securities Exchange Act Release No. 59243 (January 13, 2009) (File No. Phlx-2008-86) (adding those charges to the fee schedule).

transactions other than transactions involving Complex Orders, as described in the Exchange's Summary of Index Option Charges. The Exchange proposes to amend its Summary of Index Option Charges to assess any applicable option transaction charges to participants, including specialists and ROTs, on contracts in index options that are executed electronically as part of a Complex Order. For clarity, the Exchange proposes to amend its Summary of Index Option Charges to state specifically that Registered Option Traders (on-floor) and specialists will be assessed \$0.24 per contract side on contracts that are executed electronically as part of a Complex Order.

Summary of U.S. Dollar-Settled Foreign Currency Option Charges

The Exchange currently assesses an option transaction charge for transactions in options overlying U.S. dollar-settled foreign currencies, as described in the Exchange's Summary of U.S Dollar-Settled Foreign Currency Option Charges. The Exchange proposes to amend its Summary of U.S Dollar-Settled Foreign Currency Option Charges schedule to assess any option transaction charges on contracts in U.S dollar-settled foreign currency options that are executed electronically as part of a Complex Order. For clarity, the Exchange proposes to amend its Summary of U.S Dollar-Settled Foreign Currency Option Charges schedule to state specifically that Registered Option Traders (on-floor) and specialists will be assessed \$0.24 per contract side on contracts that are executed electronically as part of a Complex Order.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing \$0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charge described in the Summary of Equity Option, and MNX, NDX, RUT and RMN Charges. Complex Order volume is not used in calculating the Volume Threshold.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the

<sup>10</sup> See Securities Exchange Act Release No. 58420 (August 25, 2008), 73 FR 51035 (August 29, 2008) (SR-Phlx-2008-62).

<sup>11</sup> 15 U.S.C. 78f(b).

objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to specialists and ROTs transacting with Complex Orders sent to the Exchange for execution.

*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.

## 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)(A)(ii) of the Act<sup>13</sup> and paragraph (f)(2) of Rule 19b-4<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-87 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Phlx-2008-87. 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-Phlx-2008-87 and should be submitted on or before February 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-1232 Filed 1-21-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59244; File No. SR-NASDAQ-2008-102]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto To Establish a Pilot Program for NASDAQ Basic Data Feeds

January 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December

23, 2008, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. On January 8, 2009, NASDAQ filed Amendment No. 1 to the proposed rule change. On January 12, 2009, NASDAQ replaced the original filing and Amendment No. 1 by filing Amendment No. 2 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing a rule change to establish a five-month pilot to offer "NASDAQ Basic" which is a real time data feed combining both NASDAQ's Best Bid and Offer ("QBBO") and the NASDAQ Last Sale. NASDAQ will offer information separately for NASDAQ-, NYSE- and Amex-listed stocks. NASDAQ Basic will be available free of charge for the first month of the five-month pilot.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

##### 7047. NASDAQ Basic

(a) *For a five-month pilot period commencing on February 1, 2009, NASDAQ shall offer proprietary data feeds containing real-time market information from the NASDAQ Market Center. There shall be no fee for NASDAQ Basic for the first month of the pilot.*

(1) *"NASDAQ Basic for NASDAQ" shall contain NASDAQ's best bid and offer and last sale for NASDAQ-listed stocks; and*

(2) *"NASDAQ Basic for NYSE" shall contain NASDAQ's best bid and offer and last sale for NYSE-listed stocks.*

(3) *"NASDAQ Basic for Alternext" shall contain NASDAQ's best bid and offer and last sale for Alternext-listed stocks.*

<sup>3</sup> In Amendment No. 2, NASDAQ removed data from the jointly-operated NASDAQ/FINRA Trade Reporting Facility ("TRF") from the NASDAQ Basic product. NASDAQ notes that a separate filing will be made in the event approval is sought to include TRF data in this product. In addition, NASDAQ made technical changes including changing the name of the Alternext market, clarifying that no fees will be assessed during the first month of the pilot, and explaining the application of internal and external distributor fees.

<sup>4</sup> Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at <http://www.nasdaqtrader.com>.

#### (b) User Fees

(1) *Except as provided in (b)(2) and (b)(3), for the NASDAQ Basic product there shall be a per subscriber monthly charge of \$10 for NASDAQ-listed stocks, \$5 for NYSE-listed stocks, and \$5 for Alternext-listed stocks; or*

(2) *For each non-professional subscriber, as defined in Rule 7011(b), there shall be a per subscriber monthly charge of \$0.50 for NASDAQ-listed stocks, \$0.25 for NYSE-listed stocks, and \$0.25 for Alternext-listed stocks; or*

(3) *There shall be a per query fee for NASDAQ Basic of \$0.0025 for NASDAQ-listed stocks, \$0.0015 for NYSE-listed stocks, and \$0.0015 for Alternext-listed stocks.*

#### (c) Distributor Fees

(1) *Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a fee of \$1,500 per month for either internal or external distribution or both.*

(2) *Each Distributor of NASDAQ Basic for NYSE-listed stocks shall pay a fee of \$250 per month for internal distribution or \$625 per month external distribution. Distributors that pay the external distribution fee may distribute NASDAQ Basic for NYSE-listed stocks internally with no additional distribution fee.*

(3) *Each Distributor of NASDAQ Basic for Alternext-listed stocks shall pay a fee of 250 per month for internal distribution or \$625 per month external distribution. Distributors that pay the external distribution fee may distribute NASDAQ Basic for Alternext-listed stocks internally with no additional distribution fee.*

(4) *Each Distributor that receives Direct Access to the NASDAQ Basic shall also pay a monthly fee of \$2,000 for NASDAQ-listed stocks, \$1,000 for NYSE-listed stocks, and \$1,000 for Alternext-listed stocks.*

(5) *The terms "Distributor" and "Direct Access" shall have the same meanings as set forth in Rule 7019.*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In July of 2008, NASDAQ successfully launched a market data product that for the first time made available to investors real-time execution prices based solely on proprietary data from the NASDAQ Market Center and FINRA/NASDAQ Trade Reporting Facility. Building on the success of that pilot, NASDAQ now proposes a five-month pilot to offer real-time quotation data in combination with last sale data solely from the NASDAQ Market Center as set forth below. There will be no fees for NASDAQ Basic for the first month of the pilot.

NASDAQ Basic is a "Level 1" product containing two data elements: (1) Quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic will be available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for *Alternext*.

As with the recently-approved NASDAQ Last Sale product, NASDAQ Basic is designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products. Providing investors with new options for receiving market data, as NASDAQ proposes, was a primary goal of the market data amendments adopted in Regulation NMS. NASDAQ developed these product proposals in consultation with industry members and also market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed.

Consistent with the sale of consolidated data and of NASDAQ proprietary data, NASDAQ proposes to charge a fee for professional use of NASDAQ Basic, and a reduced fee for non-professional use. Specifically, for each professional user of the NASDAQ Basic product, there will be a per subscriber monthly charge of \$10 for NASDAQ-listed stocks, \$5 for NYSE-listed stocks, and \$5 for *Alternext*-listed stocks. For each non-professional subscriber, there will be a per subscriber monthly charge of \$0.50 for NASDAQ-listed stocks, \$0.25 for NYSE-listed stocks, and \$0.25 for *Alternext*-listed stocks. "Non-professional" is a term that is well-understood within the vendor and user communities, and it will have the same meaning in this proposed rule as it currently has in Rule 7011(b), For

users that do not require a monthly subscription, there will be a per query option available for NASDAQ Basic, with a fee of \$0.0025 for NASDAQ-listed stocks, \$0.0015 for NYSE-listed stocks, and \$0.0015 for *Alternext*-listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscriptions when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of other NASDAQ proprietary products, all distributors of NASDAQ Basic will be assessed a Distributor Fee in addition to any applicable usage fees. Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a fee of \$1,500 per month for either internal or external distribution. Each Distributor of NASDAQ Basic for NYSE-listed stocks shall pay a fee of \$250 per month for internal distribution or \$625 per month external distribution. Each Distributor of NASDAQ Basic for *Alternext*-listed stocks shall pay a fee of \$250 per month for internal distribution or \$625 per month external distribution. Distributors that pay the fee for external distribution of NASDAQ Basic for NYSE and *Alternext* may distribute the same data internally for no additional fee. In addition, each Distributor that receives Direct Access to the NASDAQ Basic shall also pay a monthly fee of \$2,000 for NASDAQ-listed stocks, \$1,000 for NYSE-listed stocks, and \$1,000 for AMEX-listed stocks. The terms "Distributor" and "Direct Access" are well-understood by market data distributors and will have the same meanings in this proposed rule as currently set forth in NASDAQ Rule 7019.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general and with Section 6(b)(4) of the Act,<sup>6</sup> as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f-3(b)(4) [sic].

The NASDAQ Basic market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>7</sup>

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price NASDAQ Basic is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization ("SRO") markets, as well as broker-dealers ("BDs") and aggregators such as the Direct Edge and NexTrade electronic communications network ("ECN"). Each SRO market competes to produce transaction reports via trade executions,

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers’ production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and distribution of proprietary data products, as Archipelago and BATS Trading did prior to registering as SROs. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful

form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract “eyeballs” that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors’ pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.

Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability

to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including “Project BOAT,” a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for NASDAQ Basic, NASDAQ considered the competitiveness of the market for BBO and last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, as set forth in detail above, the market for the data elements contained in NASDAQ Basic is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, NASDAQ expects that the New York, NYSEArca, BATS, and American Stock Exchanges will each respond to this proposal with a similar proposal to distribute competing data products. Under the regulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

(ii) as to which NASDAQ consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-102 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-102 and should be

submitted on or before February 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-1231 Filed 1-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11632 and #11633]**

**Maine Disaster #ME-00017**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maine (FEMA-1815-DR), dated 01/09/2009.

*Incident:* Severe Winter Storm and Flooding.

*Incident Period:* 12/11/2008 through 12/29/2008.

*Effective Date:* 01/09/2009.

*Physical Loan Application Deadline Date:* 03/10/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/09/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 01/09/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Androscoggin, Cumberland, Knox, Lincoln, Sagadahoc, Waldo, York.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....	4.500

<sup>8</sup> 17 CFR 200.30-3(a)(12).

	Percent
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	4.000

The number assigned to this disaster for physical damage is 11632B and for economic injury is 11633B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9-1209 Filed 1-21-09; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11430 and #11431]**

**Texas Disaster Number TX-00308**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 5.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA-1791-DR), dated 09/13/2008.

*Incident:* Hurricane Ike.

*Incident Period:* 09/07/2008 through 10/02/2008.

*Effective Date:* 01/06/2009.

*Physical Loan Application Deadline Date:* 02/06/2009.

*EIDL Loan Application Deadline Date:* 06/15/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of TEXAS, dated 09/13/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/06/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9-1210 Filed 1-21-09; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****[Disaster Declaration #11631]****Washington Disaster # WA-00018  
Declaration of Economic Injury****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington, dated 01/12/2009.*Incident:* Green River/Kummer Bridge Closure.*Incident Period:* 11/14/2008 and continuing.**EFFECTIVE DATE:** 01/12/2009.*EIDL Loan Application Deadline Date:* 10/13/2009.**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: King.

Contiguous Counties:

Washington: Chelan, Kitsap, Kittitas, Pierce, Snohomish, Yakima.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 116310.

The States which received an EIDL Declaration # are Washington.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: January 12, 2009.

**Sandy K. Baruah,***Acting Administrator.*

[FR Doc. E9-1208 Filed 1-21-09; 8:45 am]

**BILLING CODE 8025-01-P****SMALL BUSINESS ADMINISTRATION****Advisory Committee on Veterans Business Affairs****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice of open Federal Advisory Committee meeting.**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.**DATES:** The meeting will be held on February 10-11, 2009, from 9 a.m. to 5 p.m. Eastern Standard Time.**ADDRESSES:** The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Eisenhower Conference Room, 2nd floor, Washington, DC 20416.**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include: (1) Status of the current committee; (2) Orientation for new members; (3) Discussion of the permanency of SBA's Advisory Committee; (4) A review of SBA's Programs and Services; and (5) Implementation steps of Public Law 110-186.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by February 2, 2009, by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, *Telephone number:* (202) 619-1697, *Fax number:* 202-481-6085, e-mail address: *cheryl.simms@sba.gov*.Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619-1697; e-mail address: *cheryl.simms@sba.gov*, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.For more information, please visit our Web site at *http://www.sba.gov/vets*.

Dated: January 5, 2009.

**Cherylyn Lebon,***SBA Committee Management Officer.*

[FR Doc. E9-1206 Filed 1-21-09; 8:45 am]

**BILLING CODE 8025-01-P****DEPARTMENT OF STATE****[Public Notice 6488]****In the Matter of the Review of the Designations of Al-Qa'ida (AQ), Haraket-ul-Mujahidin (HUM), Popular Front for the Liberation of Palestine (PFLP), and Palestinian Islamic Jihad (PIJ) and All Designated Aliases, as Foreign Terrorist Organizations Pursuant to Section 219 of the Immigration and Nationality Act, as Amended**

Based upon a review of the Administrative Records assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designations of the aforementioned organizations as foreign terrorist organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designations of the aforementioned organizations as foreign terrorist organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: January 9, 2009.

**John D. Negroponte,***Deputy Secretary of State, Department of State.*

[FR Doc. E9-1221 Filed 1-21-09; 8:45 am]

**BILLING CODE 4710-10-P****DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****[FHWA Docket No. FHWA-08-0106]****Express Lanes Demonstration Program—Performance Goals for the Texas Department of Transportation Express Lanes IH-635/IH35E and North Tarrant Express Lanes Projects****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice; request for comments.**SUMMARY:** Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59; Aug. 10, 2005), authorizes the Secretary of Transportation (Secretary) to develop

and publish performance goals for each express lane project accepted under the Express Lanes Demonstration Program. This notice lists the Performance Goals, Monitoring and Reporting Program requirements for the I-635 (the LBJ Freeway) project in Dallas and North Tarrant Express project in Ft. Worth in the State of Texas.

**DATES:** Comments must be received on or before February 23, 2009.

**ADDRESSES:** Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, contact Mr. Wayne Berman, Office of Operations, (202) 366-4069, ([Wayne.Berman@dot.gov](mailto:Wayne.Berman@dot.gov)); for legal questions contact Mr. Michael Harkins, Attorney Advisor, Office of the Chief Counsel, (202) 366-4928, ([Michael.Harkins@dot.gov](mailto:Michael.Harkins@dot.gov)). The FHWA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

**Background**

Section 1604(b) of SAFETEA-LU, established the Express Lanes Demonstration Program (ELDP). Under the ELDP, the Secretary must carry out 15 demonstration project during the period of fiscal years 2005 through 2009 to permit States to collect a toll from motor vehicles at eligible toll facilities. On September 18, 2007, the Texas Department of Transportation (TxDOT) submitted an application to the FHWA for the I-635 (LBJ Freeway) managed lane project, which was approved on March 19, 2008. Subsequently, TxDOT submitted an application to the FHWA for the North Tarrant Express managed lane project, which was approved on July 16, 2008.

The I-635 project would consist of the construction of 28 miles of new managed (toll) lanes as part of the reconstruction of portions of I-635 and I-35E in the Dallas area. The North Tarrant Express project would consist of the construction of approximately 36 miles of new managed (toll) lanes as part of the reconstruction of portions of I-820, I-35W, and State Highway 183 in the Fort Worth area.

Pursuant to section 1604(b)(7) of SAFETEA-LU, the Secretary, in cooperation with the State, public authority, private entity, and other program participants must develop performance goals for each project and publish such goals for public comment. This notice lists, and solicits public comment on, the Performance Goals, Monitoring and Reporting Programs for the I-635 and North Tarrant Express Projects.

**Performance Goals, Monitoring and Reporting Program**

The following describes the agreed upon Express Lane Demonstration Program's Performance Goals, Monitoring and Reporting Program for the I-635 and the North Tarrant Express Projects. This program has been developed cooperatively between TxDOT and FHWA.

*A. Performance Goals*

The FHWA and TxDOT have identified the following three Performance Goals for the project. These Performance Goals reflect the priorities for the project at the State and local levels. The Performance Goals also reflect the goals of the Express Lanes Demonstration Project set forth in Federal law at SAFETEA-LU Section 1604(b).

I. Effects on travel, traffic, and air quality.

II. Distribution of benefits and burdens.

III. Use of alternative transportation modes.

IV. Use of revenues to meet transportation or impact mitigation needs.

*B. Core Performance Measures*

The following Core Performance Measures will be utilized to focus the monitoring and reporting work undertaken to evaluate facility performance. The Performance Goals for which each Core Performance Measure will provide relevant information are indicated in parenthesis. Specific reporting items for each Core Performance Measure are listed immediately below it.

Generally, facility performance will be assessed by reference to baseline values or trends for the reported items under the Core Performance Measures. The methodology for determining each baseline value or trend will be explained in detail in the Performance Monitoring and Evaluation Manual described below.

1. Travel-Time Reliability in Priced Lanes (I, II, III)

- Report percentage of time that the managed lanes are operating at a minimum average speed of 50 miles per hour, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods.

- Report 95th percentile travel times for the managed lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. (The 95th percentile represents the slowest traffic day each month.) This measure is reported in minutes.

- Report the Buffer Index calculated to demonstrate performance in the managed lanes, broken down into daily averages for the a.m. peak, off-peak, and p.m. peak periods. The Buffer Index is the extra time that travelers must add to their average travel time when planning trips to ensure on-time arrival. (For example, a buffer index of 40 percent means that for a trip that usually takes 20 minutes a traveler should budget an additional 8 minutes to ensure on-time arrival most of the time. The 8 extra minutes is called the buffer time. Therefore, the traveler should allow 28 minutes for the trip in order to ensure on-time arrival 95 percent of the time.)

- Report traffic volumes and traffic volume changes on a total and percentage-change basis annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak the managed lanes by direction.
- Report traffic speeds and traffic speed differences from the previous year (on a total and percentage-change basis)

annually, broken into daily averages, for daily total, by a.m. peak, off-peak, and p.m. peak for the managed lanes by direction.

- Report actual number of incidents and identify the effect on lane availability for the managed lanes during this time, including the length of time each such lane was unavailable.

#### 2. Changes in Mode Split/Ridership/ Vehicle Occupancies of Priced vs. General Purpose Lanes (I, II, III)

- Report number of declared HOVs for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak and p.m. peak for managed lanes.

- Report number of buses (i.e. registered non-revenue accounts) for the year and differences from the previous year (on a total and percentage-change basis), broken into daily averages, by a.m. peak, off-peak, and p.m. peak for managed lanes.

- Report average toll charged for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type, broken into daily averages, by a.m. peak, off-peak, and p.m. peak for managed lanes.

- If reasonably available, report ridership volumes for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type; SOV, HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak for the general purpose lanes, managed lanes, and parallel access roads as applicable.

- Report on the amount of vehicle miles traveled (VMT) for the year and differences from the previous year (on a total and percentage-change basis), by vehicle type; SOV, HOV2+, HOV3+, Bus, Van Pool and Other, broken into daily averages by a.m. peak, off-peak, and p.m. peak on the managed lanes.

- Report Metropolitan Planning Organization (MPO) rideshare payments, HOV subsidy and other disbursements.

#### 3. Transit Schedule Adherence (II, III)

- To the extent the information is reasonably available, report on transit service reliability—percentage of on-time performance of transit service.

- To the extent the information is reasonably available, report on any existing bus transit routes or sanctioned van-pool accounts utilizing the corridor in advance of opening the project for tolling. This is to be used as a benchmark for added bus transit routes or sanctioned van-pool accounts

utilizing the corridor after tolling begins.

#### 4. Application of Revenue Reinvestment (II, IV)

- Report breakdown of the use of revenues.
- Report percentage of revenue used to mitigate impacts.

#### 5. Change in Criteria Pollutant Emissions for the Region (I)

- Report on the concentrations of six criteria pollutants (particle pollution, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead) during the current year and differences from the previous year (on a total and percentage-change basis) utilizing reasonably available and reliable air quality reporting tools and mechanisms.

- Utilize the results of the core performance sub-elements B.I(a) (Travel-time reliability in tolled lanes) and B.III(a) (Changes in mode split/ridership/vehicle occupancies of tolled vs. general purpose lanes) to the extent possible to assist in utilizing the NCTCOG's air quality modeling tools and mechanisms to demonstrate any reductions in criteria pollutant emissions.

#### C. Monitoring and Reporting Program

##### I. Performance Monitoring and Evaluation Manual

Prior to commencement of pricing operations on the facility, TxDOT will prepare a Performance Monitoring and Evaluation Manual document that will describe the information to be collected, the methodology for identifying baseline values and approach for developing the annual reports that assess facility performance. It will serve as a tool to facilitate achievement of the performance goals identified in Part A by documenting the program for regular monitoring and reporting to be utilized in the assessment of the Core Performance Measures identified in Part B.

The Performance Monitoring and Evaluation Manual will be in the form of an instruction manual, and will address the following subject areas.

1. Project Overview
2. Purpose and Need
3. Organization of Document
4. Overview of Project Goals
5. Overview of Core Performance Measures
  - a. Key Questions and definition of Core Performance Measures
  - b. Description of how specific reported information relates to Core Performance Measures and Performance Goals

6. Methodology for Determining Baseline Measurements

7. Annual Monitoring Program Measurement Processes and Procedures

8. Coordination with other Transportation Providers

9. Reference Documentation Listing as Applicable

#### II. Monitoring and Reporting Annual Report

The annual monitoring and reporting program measurement processes and procedures will be documented in an annual report that shall include the following sections.

1. Project Information
2. Performance Highlights
3. Performance Summary
4. Performance Details

#### D. Timeline and Process for Submission of ELDP Monitoring Report

The annual reporting period for the Express Lanes Demonstration Program is between January 1st and December 31st of each year. Data collected and reported will align with this time period. The first year's data after tolling commences will be data collected from the date of service commencement to December 31st of that year. TxDOT's submission to FHWA of the Monitoring and Reporting Annual Report will occur no later than March 31st of each year.

**Authority:** Section 1604(b)(7) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59; Aug. 10, 2005).

Issued on: January 8, 2009.

**Thomas J. Madison, Jr.,**

*Federal Highway Administrator.*

[FR Doc. E9-1174 Filed 1-21-09; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Iowa Interstate Railroad

[Docket Number FRA-2008-0105]

The Iowa Interstate Railroad (IAIS), a Class III Railroad, petitioned for a

waiver of compliance from certain provisions of the steam locomotive safety standards as prescribed by CFR 230.105(a) *Lateral motion*, for two steam locomotives used in tourist/excursion service. Specifically, this waiver request applies to locomotives number RDC 6988 and 7081. These Class QJ, 2–10–2 locomotives were built by the Datong Locomotive Works, China. The Datong Works constructed 4,714 locomotives of this type between 1967 and 1988. The maximum operating speed for this type of locomotive is 50 mph.

Both locomotive numbers 6988 and 7081 received a standard 250,000 km overhaul, a Class 3 repair, in China prior to being shipped to the United States. The manufacturer's specifications for the QJ Class locomotive require a total lateral clearance of 20 mm (0.787 inch) on the number 1 and 5 driving axle, with a 4 mm (0.157 inch) clearance for the three center axles (no. 2–4). All tire back-to-back spacing is at 1,252 mm (53.267 inches). The purpose for this specification is to allow a locomotive with a long rigid wheelbase to negotiate a curve up to 15.2 degrees. The lateral wear limit for all driving axles is 10 mm (0.393 inch) over the original dimensions. In summary, by design and as built, model QJ locomotive exceeds the U.S. limit of 0.75 inch for allowable lateral clearance for driving axles number 1 and 5 as specified by 49 CFR § 230.105(a).

IAIS requests relief from the requirements of 49 CFR 230.105(a) for driving axles numbers 1 and 5 to allow for a maximum lateral clearance of up to 30 mm (1.181 inches). This is consistent with the manufacturer's design specification, and the operating experience of the China National Railway. In addition, the locomotive will be maintained in accordance with the requirements of 49 CFR 230.105(c) to ensure that no part of the running gear interfere with any other part of the steam locomotive.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0105) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–1202 Filed 1–21–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Iowa Interstate Railroad

[Docket Number FRA–2008–0098]

The Iowa Interstate Railroad (IAIS), a Class III Railroad, petitioned for a waiver of compliance from certain provisions of the safety glazing standards as prescribed by 49 CFR \* 223.15 *Requirements for existing passenger cars*, for 14 open-window coach cars used in tourist/excursion service. Specifically the car numbers are: RRD<sub>X</sub> 804, 806, 810, 814, 816, 819, 820, 822, 826, 831, 834, 836, 837, and 838. These cars were built by the Canadian Car & Foundry Company in 1953, for the Canadian Pacific Railway, and used in Montreal, Quebec, in commuter service until 2005.

The cars were purchased by the parent company of IAIS, Railroad Development Corporation in the fall of 2006, for excursion service on an infrequent basis. The trains are proposed to be locomotive-hauled and operate over a mixture of urban/rural areas at speeds up to 45 mph. The glazing in these coaches are made of Lexan<sup>®</sup> polycarbonate plastic, and meet the requirement for Canadian passenger equipment glazing, but may not meet the requirements of 49 CFR Part 223. Since the cars were purchased and delivered to IAIS, there have been no acts of vandalism against the glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0098) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is

taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC, on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–1203 Filed 1–21–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Metropolitan Transit Authority

[Waiver Petition Docket Number FRA–2008–0156]

The Metropolitan Transit Authority (MTA), on behalf of the Long Island Rail Road (LIRR) and Metro-North Commuter Rail (MNCW), seeks approval for a waiver of compliance with the requirements of the *Passenger Equipment Safety Standards* contained in 49 CFR 238.105(d)(1), *train electronic hardware and software safety*. Section 49 CFR 238.105(d)(1) states that:

“Hardware and software that controls or monitors a train's primary braking system shall either: (I) Fail safely by initiating a full service brake application in the event of a hardware or software

failure that could impair the ability of the engineer to apply or release the brakes; or (ii) Access to direct manual control of the primary braking system (both service and emergency braking) shall be provided to the engineer.”

This waiver is for over 1,000 M–7 electric MU's already being operated over LIRR and MNCW. The braking software provided by the manufacturer only partly meets the above requirements. The railroad requests that an application of only emergency brakes in the event of a loss of power, or failure (hardware and software), of the friction brake control unit be allowed in lieu of either the requirement for a full service brake application or restoration of direct manual control of the primary braking system to the operator.

The electric MU locomotives brake systems were provided by Knorr Brake Corporation and the electronic control logic was provided by Mitsubishi Electric Company. The railroad explains in their petition that the full service brake application is transmitted electronically to an analog converter which provides pneumatic brake force through application and release magnet valves. Emergency brake function is provided by venting brake pipe to initiate a trainline brake application. Emergency brake application can be initiated via the Master Controller, the B3C conductors valve, or by loss of trainline power to the emergency magnet valve circuit causing trainline to vent to atmosphere causing the brakes over the entire consist to apply at an emergency rate.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0156) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–1216 Filed 1–21–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### New Jersey Transit Rail

[Docket Number FRA–2008–0097]

The New Jersey Transit Rail (NJ Transit) seeks a waiver of compliance from certain provisions of 49 CFR Part 218, *Railroad Operating Practices*. Specifically, NJ Transit is requesting a waiver of Blue Signal Requirements as prescribed in 49 CFR 218.29(c)(1) at their Morrisville Yard facility located in Morrisville, PA.

Equipment servicing and storage facilities (yards) on NJ Transit have often evolved from older facilities with limited area for expansion. Tack lengths are limited, while equipment consists have been lengthened to accommodate increased passenger ridership. Newer facilities are restricted by the cost or unavailability of required land. Therefore, at certain locations, track must typically be utilized to its capacity.

Morrisville Yard is a facility where the tracks are utilized to capacity. The current Mechanical Department workforce at this facility includes approximately 200 employees servicing approximately 30 trains per day. The allotted times for servicing equipment is restricted due to train availability, time of day, and train scheduling requirements. Currently, there are 18 tracks utilized for inspection, servicing, and repair, which require Blue Signal Protection. The maximum track space on each track is being used to accommodate the current length of the train consists. A Transportation Department Yardmaster is responsible for controlling train movements within the facility, and to coordinate maintenance with the Mechanical Department. Since these 18 tracks are not under the control of the Mechanical Department, if a derail is used for the protection of workers, Federal law requires the derail to be placed 150 feet away from the equipment requiring Blue Signal Protection. This greatly restricts the train lengths that can be placed on these tracks. In addition, lining and locking a track switch away from the track being protected will restrict the amount of equipment that can be simultaneously inspected, serviced, or repaired.

NJ Transit believes that the current 5 mph speed limit in effect at the Morrisville facility along with positioning a locked derail 50 feet from the equipment being protected, as prescribed in § 218.29(a)(4), will provide effective Blue Signal Protection for employees working on the equipment. In addition, a Transportation Department Yardmaster is on duty 24 hours a day, seven days a week, to control train movements and coordinate maintenance activities with Mechanical Department Supervisors. NJ Transit Timetable Special Instructions restricts the speed of Morrisville facility tracks 1–18 to not more than 5 mph. NJ Transit declares that this waiver is needed to ensure timely inspections, servicing, and repairs to trains, so that they can meet the needs of their customers.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0097) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–1222 Filed 1–21–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Port Authority Trans-Hudson Corporation

[Docket Number FRA–2008–0143]

The Port Authority Trans-Hudson Corporation (PATH), seeks a waiver of compliance from certain provisions of Safety Appliance Standards, Title 49 CFR Part 231, that requires a sill step, a side and end handhold, handbrake, end handrails, side door steps and uncoupling levers on newly built PA–5 cars. Specifically, PATH's request is to use an alternate compliance of safety appliance arrangements for the production of PATH's new fleet of passenger cars in passenger train service.

PATH operates on 13.8 miles of an interstate rail transit system between five major terminals and eight intermediate stations linking New Jersey and New York. The PATH system is a closed system, does not interchange and has no highway rail crossings. Currently PATH is an inter-urban rapid transit system operating 326 electrically powered, multiple unit vehicles that receive 650 volts transmitted by third rail of similar comparable design. PATH operates with relatively short headways and high platforms over a system that one-half of which is located in tunnels below ground level carrying 250,000 passengers in a 24-hour period. There is no interchange of car equipment between PATH and any rapid transit system or railroad. Because of the unique characteristics of PATH, that is more representative of an inter-urban rapid transit system, PATH requests waiver of certain provisions of FRA requirements related to safety appliances which they believe are not totally applicable. PATH also believes that in the past, FRA, while asserting jurisdiction over PATH, has acknowledged that PATH's operations are analogous to that of an inter-urban rapid transit system.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2008-0143) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-1223 Filed 1-21-09; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### R. J. Corman Railroad

[Docket Number FRA-2008-0099]

R.J. Corman (RJC), a Class III Railroad, petitioned for waiver of compliance from certain provisions of the steam locomotive safety standards as prescribed by 49 CFR 230.105(a) *Lateral motion*, for one steam locomotive used in tourist/excursion service. Specifically, this waiver request applies to locomotive number RJC 2008, with boiler number 7040. The Class QJ, 2-10-2 locomotives were built by the Datong Locomotive Works, China. The Datong Works constructed 4,714 locomotives of this type between 1967 and 1988. The maximum operating speed for this type of locomotive is 50 mph.

Locomotive number RJC 2008 received a standard 250,000 km overhaul, a Class 3 repair in China prior to being shipped to the United States. The manufacturer's specifications for the QJ Class locomotive require a total lateral clearance of 20 mm (0.787 inch) on the number 1 and 5 driving axle, with a 4 mm (0.157 inch) clearance for the three center axles (no. 2-4). All tire back-to-back spacing is at 1,252 mm (53.267 inches). The purpose for this specification is to allow a locomotive with a long rigid wheelbase to negotiate a curve up to 15.2 degrees. The lateral wear limit for all driving axles is 10 mm (0.393 inch) over the original dimensions. In summary, by design and as built, model QJ locomotive exceeds the U.S. limit of 0.75 inch for allowable lateral clearance for driving axles number 1 and 5 as specified by 49 CFR 230.105(a).

RJC requests relief from the requirements of 49 CFR 230.105(a) for driving axles numbers 1 and 5 to allow for a maximum lateral clearance of up to 30 mm (1.181 inches). This is consistent with the manufacturer's design specification, and the operating experience of the China National

Railway. In addition, the locomotive will be maintained in accordance with the requirements of 49 CFR 230.105(c) to ensure that no part of the running gear interfere with any other part of the steam locomotive.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2008-0099) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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Issued in Washington, DC, on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-1204 Filed 1-21-09; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Union Pacific Railroad Company

[Docket Number FRA-2008-0165]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment*. Specifically, UP is requesting a waiver of 49 CFR 232.213, *Extended Haul Trains*, to the extent necessary to allow UP to operate certain trains up to 1,800 miles between Class I brake inspections. The current regulation restricts extended haul train movements to 1,500 miles.

UP states that if this request is granted, they would utilize it to operate approximately 50 such trains each day. Most of these trains are coal and intermodal trains, along with some automotive trains. UP commits to complying with all other provisions of § 232.213 using qualified UP mechanical inspectors. UP also states that if this waiver is approved, no UP employee in active service at points where train inspections will no longer be performed, due to this waiver, will be furloughed as a result of the waiver. UP claims that they have provided this commitment in writing to the Brotherhood of Railway Carmen. However, UP retains the right to relocate such employees if necessary.

UP believes this request is justified because they experience low defect rates on extended haul trains that are currently operating in coal, intermodal, and automotive service. Of the 15,911 inspections performed on extended haul trains during a three year period, only

0.49 percent of the inspections revealed FRA defects. UP's expanded use of wayside detection technologies has allowed UP to further improve safety by enabling it to identify defects not readily identified by train inspections. Of further note, UP points out that Canadian rail operators have been permitted to operate certain trains from origin to destination within Canada, without undergoing intermediate brake test and train inspections. While this allows Canadian operators to operate some trains distances of more than 2,000 miles without undergoing intermediate inspections, the change has not resulted in adverse safety effects.

UP claims that granting this request will give UP the flexibility it needs to concentrate its train inspections at terminals with greatest resources, which are best equipped to perform inspections in a safe expeditious manner. It would also lead to improved operating efficiencies and increased train velocities. The resulting decrease in en route delays would have the added benefit of allowing train crews to complete their journeys in shorter amounts of time and reduce fuel consumption. UP estimates that if this waiver is granted, they will save approximately 350,000 gallons of fuel annually through the elimination of certain inspections at Elko, NV, Pocatello, ID, and Salt Lake City, UT.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2008-0165) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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

Issued in Washington, DC on January 14, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9-1218 Filed 1-21-09; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4535.

**Key to "Reason for Delay"**

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or

precedent-setting and requires extensive analysis.  
4. Staff review delayed by other priority issues or volume of special permit applications.

**Meaning of Application Number Suffixes**

N—New application.

M—Modification request.  
PM—Party to application with modification request.

Issued in Washington, DC, on January 13, 2009.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

Application number	Applicant	Reason for delay	Estimated date of completion
<b>Modification to Special Permits</b>			
14167-M .....	Trinityrail, Dallas, TX .....	4	02-28-2009
8723-M .....	Alaska Pacific Power Company, Anchorage, AK .....	1	02-28-2009
<b>New Special Permit Applications</b>			
14668-N .....	Lincoln Composites, Lincoln, NE .....	1	02-28-2009
14689-N .....	Trinity Industries, Inc., Dallas, TX .....	2, 3	02-28-2009
14733-N .....	GTM Technologies, Inc., San Francisco, CA .....	1, 3	03-31-2009

[FR Doc. E9-1010 Filed 1-21-09; 8:45 am]

BILLING CODE 4910-60-M

**DEPARTMENT OF THE TREASURY****Community Development Financial Institutions Fund****New Markets Tax Credit Program**

*Funding Opportunity Title:* Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2009 Allocation Round of the New Markets Tax Credit Program.

*Announcement Type:* Initial announcement of tax credit allocation availability.

*Dates:* Electronic applications must be received by 5 p.m. ET on April 8, 2009. Applications sent by mail, facsimile or other form will not be accepted. The Community Development Financial Institutions Fund (the Fund) will not accept applications in paper form, other than the assigned signature page and certain paper attachments (see Section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Allocation applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for certification as a CDE that is postmarked on or before March 3, 2009 (see Section III of this NOAA for more details).

*Executive Summary:* This NOAA is issued in connection with the calendar year 2009 tax credit allocation round of the New Markets Tax Credit (NMTC) Program, as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of

2000 (Pub. L. 106-554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108-357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108-357), and Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432) (the Act). Through the NMTC Program, the Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the Fund announces the availability of \$3.5 billion of NMTC authority authorized by the Act.

In this NOAA, the Fund specifically addresses how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

**I. Allocation Availability Description****A. Programmatic changes:**

1. *Allocation Amounts.* As described in Section IIA, the Fund anticipates that it will provide allocation awards of not more than \$100 million per applicant. This current \$100 million cap is a reduction from the 2008 round cap of \$125 million. In the 2008 allocation round, 70 entities received allocations totaling \$3.5 billion. The Fund reduced the cap this year to better ensure a wider distribution of awards to the most highly qualified applicants.

2. *Prior QEI Issuance Requirements.* In order to be eligible to apply for NMTC allocations in the 2009 round, as

described in Section III.A.2(a), applicants that have received NMTC allocation awards in previous rounds are required to meet minimum Qualified Equity Investment (QEI) issuance thresholds with respect to their prior-year allocations. The CDFI Fund has adjusted some of these QEI requirements, in response to credit market conditions at the time of the publication of this NOAA.

*B. Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for the seventh round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D-1, published on December 28, 2004) and related guidance, notices and other publications; and (iii) the application and related materials for this seventh NMTC Program allocation round. All such materials may be found on the Fund's Web site at <http://www.cdfifund.gov>.

The Fund encourages applicants to review these documents. Capitalized terms used, but not defined, in this NOAA shall have the respective meanings assigned to them in the allocation application, IRC § 45D or the IRS regulations.

**II. Allocation Information**

*A. Allocation amounts:* Pursuant to the Act, the Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of \$3.5 billion in equity as to which NMTCs may be claimed, as

permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the Fund anticipates that it will not issue more than \$100 million in tax credit allocation authority per applicant. The Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the Fund deem it appropriate. In order to receive an allocation in excess of the \$100 million cap, an applicant, at a minimum, will need to demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; or (ii) its strategy will produce extraordinary community impact. The Fund reserves the right to allocate tax credit authority to any, all, or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of tax credit authority.

C. *Notice of Allocation and Allocation Agreement:* Each Allocatee under this NOAA must sign a Notice of Allocation and an Allocation Agreement before the NMTC Allocation is effective. The Notice of Allocation and the Allocation Agreement contain the terms and conditions of the allocation. For further information, see Section VI of this NOAA.

### III. Eligibility

A. *Eligible applicants:* IRC § 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the \$3.5 billion in general NMTC allocation authority.

1. *CDE certification:* For purposes of this NOAA, the Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is postmarked on or before March 3, 2009. Applicants for certification may obtain a CDE certification application through the Fund's Web site at <http://www.cdfifund.gov>. Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a community development financial institution (CDFI) or a specialized small business investment company (SSBIC) does not need to submit a CDE certification application; however, it must register as

a CDE on the Fund's Web site on or before 5 p.m. ET on March 3, 2009. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs. See Section IV.D.1.(c) of this NOAA for further requirements relating to postmarks.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change to the Fund; and the request must be received by the Fund by 5 p.m. ET on April 8, 2009. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by e-mail to [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov) or by facsimile to (202) 622-7754.

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOAA. For purposes of this section, the Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation application, or any entity otherwise identified as an Affiliate by the applicant in its NMTC allocation application materials. Prior awardees are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements:* The following describes the QEI issuance requirements applicable to prior Allocatees, including those Allocatees that received allocations pursuant to special allocation authority under the Gulf Opportunity Zone Act of 2005 ("GO Zone Allocatees").

A prior Allocatee in the first round of the NMTC Program (CY 2001–2002) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has issued and received funds in-hand (the term "funds in-hand" does not include committed funding) from its investors for 95 percent of its QEIs relating to its CY 2001–2002 NMTC Allocation.

A prior Allocatee in the second round of the NMTC Program (CY 2003–2004) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand

from its investors for at least 80 percent of its QEIs relating to its CY 2003–2004 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 60 percent of its QEIs and that 100 percent of its total CY 2003–2004 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee in the third round of the NMTC Program (CY 2005) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its CY 2005 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 50 percent of its QEIs and that at least 80 percent of its total CY 2005 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee in the fourth round of the NMTC Program (CY 2006) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 40 percent of its QEIs and that at least 80 percent of its total CY 2006 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee (with the exception of a GO Zone Allocatee) in the fifth round of the NMTC Program (CY 2007) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2006 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 20 percent of its QEIs and that at least 60 percent of its total CY 2007 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior GO Zone Allocatee in the fifth round is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand

from its investors for at least 20 percent of its QEIs relating to its CY 2007 NMTC Allocation.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the sixth round of the NMTC Program (CY 2008) is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has: (i) Issued and received funds in-hand from its investors for at least 30 percent of its QEIs relating to its CY 2008 NMTC Allocation; or (ii) issued and received funds in-hand from its investors for at least 10 percent of its QEIs and that at least 30 percent of its total CY 2008 NMTC Allocation has been exchanged for funds in-hand from investors, or has been committed by its investors. A Rural CDE is not required to meet the above QEI issuance and commitment thresholds with regard to its 2008 NMTC allocation award.

In addition to the requirements described above, an entity is not eligible to receive a NMTC Allocation pursuant to this NOAA if an Affiliate of the applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received multiple NMTC allocation awards between the second round (CY 2003–2004) and the sixth round (CY 2008), the applicant shall be deemed to be eligible to apply for a NMTC Allocation pursuant to this NOAA if the applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on June 17, 2009, it has issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Applicants that have received GO Zone allocations under the fifth round (CY 2007) may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has issued and received funds in-hand from its investors for at least 20 percent of its QEIs relating to its CY 2007 GO Zone allocation. Rural CDEs that received allocations under the sixth round (CY 2008) may choose to exclude such allocations from this cumulative calculation.

For purposes of this section of the NOAA, the Fund will only recognize as “issued” those QEIs that have been finalized in the Fund’s Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their

Subsidiary transferees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, “committed” QEIs are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make an investment in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a QEI; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than June 17, 2011.

The applicant will be required, upon notification from the Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.B.2 of this NOAA, the Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an applicant’s track record of raising QEIs and/or deploying its QLICs.

Prior Allocatees that require any action by the Fund (e.g., certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their requests by no later than April 3, 2009 in order to guarantee that the Fund completes all necessary approvals prior to June 17, 2009. Applicants for certification may obtain a CDE certification application through the Fund’s Web site at <http://www.cdfifund.gov>. Applications for CDE certification must be submitted as instructed in the application form.

(b) *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an applicant if the applicant or any of its Affiliates is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such,

incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(c) *Pending resolution of noncompliance:* If an applicant is a prior awardee or Allocatee under any Fund program and if: (i) it has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant’s application under this NOAA pending full resolution of the noncompliance, in the sole determination of the Fund. Further, if an Affiliate of the applicant is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund will consider the applicant’s application under this NOAA pending full resolution of the noncompliance, in the sole determination of the Fund.

(d) *Default status:* The Fund will not consider an application submitted by an applicant that is a prior Fund awardee or Allocatee under any Fund program if, as of the application deadline of this NOAA, the Fund has made a final determination that such applicant is in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination to such applicant.

Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if, as of the application deadline of this NOAA, the Fund has made a final determination that an Affiliate of the applicant is a prior Fund awardee or Allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s) and the Fund has provided written notification of such determination. Such entities will be ineligible to apply for an award pursuant to this NOAA so long as the Applicant’s, or its Affiliate’s, prior award or allocation remains in default status or such other time period as specified by the Fund in writing.

(e) *Termination in default:* The Fund will not consider an application submitted by an applicant that is a prior

Fund awardee or Allocatee under any Fund program if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that such applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to such applicant; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA.

Further, an entity is not eligible to apply for an allocation pursuant to this NOAA if: (i) Within the 12-month period prior to the application deadline of this NOAA, the Fund has made a final determination that an Affiliate of the applicant is a prior Fund awardee or Allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOAA.

(f) *Undisbursed award funds:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA.

Furthermore, an entity is not eligible to apply for an award pursuant to this NOAA if an Affiliate of the applicant is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where an Affiliate of the applicant is a prior Fund Awardee under any Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable application deadline of this NOAA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of

the calendar year of the application deadline of this NOAA are included ("includable BEA awards"). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2004, 2005 and 2006 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives Funding Programs, only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included ("includable CDFI/NI awards"). Thus, for purposes of this NOAA, undisbursed CDFI Program and Native Initiative (NI) awards are the amount of FYs 2004, 2005, 2006 and 2007 awards that remain undisbursed as of the application deadline of this NOAA.

To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the 2009 Allocation Application Q&A document, available on the Fund's Web site.

The "undisbursed award funds" calculation does not include: (i) Tax credit allocation authority made available through the New Market Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated, in writing, by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of "undisbursed funds" from prior awards to provide the Fund with a complete disbursement request at least 30 business days prior to the application deadline of this NOAA.

(g) *Contact the Fund:* Accordingly, Applicants that are prior awardees and/or Allocatees under any other Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance

questions should be directed to the Compliance Manager by e-mail at [cme@cdfi.treas.gov](mailto:cme@cdfi.treas.gov) and all disbursement questions should be directed to the Fund's Financial Manager. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

Both the Compliance Manager and the Financial Manager may be reached by telephone at (202) 622-8226; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of publication of this NOAA through April 6, 2009 (one day before the application deadline). The Fund will not respond to Applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. ET on April 6, 2009 until after the funding application deadline of April 8, 2009.

3. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply to the Fund for allocations of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary.

An applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the Fund. However, the Subsidiary entities must be certified as CDEs by the Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC Allocation transfer may occur it must be pre-approved by the Fund, in its sole discretion.

The Fund strongly encourages a non-profit applicant to submit a CDE certification application to the Fund on behalf of the Subsidiary within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. A non-profit applicant that fails to certify one or more for-profit subsidiaries within 30 days of receiving a Notice of Allocation

from the Fund is subject to the Fund rescinding the award.

4. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only application considered for an allocation.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term "Affiliate" found in the allocation application, the Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated and/or managed as a common enterprise that, in fact or effect, may be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related, in fact or effect, they may be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an Application is selected to receive an allocation award, to deem certain activities ineligible.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B. of this NOAA and additional application guidance materials on the Fund's Web site at <http://www.cdfifund.gov> for more details).

5. *Entities created as a series of funds:* An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it may submit a single CDE certification application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note; however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund, in its sole discretion, which will be a condition of the Allocation Agreement.

6. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

#### **IV. Application and Submission Information**

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the Fund Web site. Following the publication of this NOAA, the Fund will make the electronic allocation application available on its Web site at <http://www.cdfifund.gov>. Applications sent by mail, facsimile or other form will not be accepted. The Fund will not accept applications in paper form, other than the signed signature page and certain paper attachments, as specified below and in the application.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials

described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the Fund's Web site. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service and assigned to the applicant and, if applicable, it's Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund. For more information on obtaining an EIN, please contact the Internal Revenue Service at (800) 829-4933 or <http://www.irs.gov>.

An applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by e-mail will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. Applicants will need access to Internet Explorer 5.5 or higher, or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of signature forms and supporting information, is set forth in

further detail in the electronic application.

*D. Application submission dates and times:*

*1. Application Deadlines*

(a) *Electronic applications:* Must be received by 5 p.m. ET on April 8, 2009. Electronic applications cannot be transmitted or received after 5 p.m. ET on April 8, 2009. In addition, applicants that submit electronic applications must separately submit (by mail or other courier delivery service) a signature page, and all other required paper attachments. The signature page and additional documents must be postmarked on or before April 10, 2009. See application instructions, provided in the electronic application, for further detail. Applications and other required documents and other attachments postmarked or received after these dates and times will be rejected. If the signature page is not postmarked by the deadlines specified above, the application will be rejected. See Section IV.D.1.(c) of this NOAA for further requirements relating to postmarks. Additional deadlines (if any) relating to the submission of general supporting documentation will be further detailed in the electronic application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) *Postmark:* For purposes of this NOAA, the term "postmark" is defined by 26 CFR 301.7502-1. In general, the Fund will require that the postmarked document bear a postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002-62, 2002-2 C.B. 574.

*E. Intergovernmental Review:* Not applicable.

*F. Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D-1, published December 28, 2004) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

*G. Other Submission Requirements:*

*1. Addresses:* The signature page and attachments for electronic applications must be sent as directed in the application materials to the Bureau of Public Debt, the application intake

coordinator for the Fund. The signature page or attachments will not be accepted at the Fund's offices in Washington, DC. Signature pages or attachments received in the Fund's offices will be rejected. Except for the signature page and attachments, electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

**V. Application Review Information**

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the Fund will evaluate each application, assigning points and numeric scores according to the criteria described below. In Phase 2, the Fund will rank applicants in accordance with the procedures set forth below.

*A. Criteria:*

*1. Business Strategy* (25-point maximum): (a) When assessing an applicant's business strategy, reviewers will consider, among other things: The applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; and the extent to which the applicant intends to make Qualified Low-Income Community Investments (QLICs) in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (i) Are designed to meet the needs of underserved markets; (ii) are flexible or non-traditional in form and on better terms than available in the marketplace; and (iii) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICs in a time period that is significantly shorter than the 5-year period permitted

under IRC § 45D(b)(1); and (iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an applicant (or the applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

*2. Community Impact* (25-point maximum): In assessing the impact on communities expected to result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to achieve significant and measurable community development and economic impacts in its Low-Income Communities, and whether the applicant is working in particularly economically distressed markets and/or in concert with Federal, state or local government or community economic development initiatives (e.g., Empowerment Zones, Enterprise Communities, and Renewal

Communities). An applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development and economic impacts that would not be achieved without NMTCs; and (b) it is working in particularly economically distressed or otherwise underserved communities and/or in concert with other Federal, state or local government or community economic development initiatives.

3. *Management Capacity* (25-point maximum): In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; experience in raising capital; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the level of involvement of community representatives and other stakeholders in the design, implementation or monitoring of an applicant's business plan and strategy. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that has received a NMTC Allocation from the Fund under a prior allocation round, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of QEIs; (b) raising capital, particularly for for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements, and to the extent that Low-Income

Community stakeholders play an active role in designing or implementing its business plan. In the case of an applicant (or any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, as determined by the Fund) that has received a NMTC Allocation from the Fund under a prior allocation round, reviewers will consider the activities that have occurred to date with respect to the prior allocation(s).

4. *Capitalization Strategy* (25-point maximum): When assessing an applicant's capitalization strategy, reviewers will consider, among other things: The extent to which the applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the extent to which the applicant identifies how existing investors will leverage their investments in Low-Income Communities or how new investors will be brought into such investments; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations, including the extent to which the applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and the applicant's timeline for utilizing an NMTC Allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of QEIs it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to end users; (d) it is likely to leverage other sources of funding in addition to NMTC investor dollars; and (e) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the

applicant or from affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by the investor and/or will target its activities to areas of greater economic distress than those currently targeted by the investor.

B. *Review and selection process*: All allocation applications will be reviewed for eligibility and completeness. The Fund may consult with the IRS on the eligibility requirements under IRC § 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

1. *Phase 1*: Reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Impact, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application sections), varies significantly from the median of the reviewers' total base scores or section scores for such application, the Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

2. *Phase 2*: Once the Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Impact sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores in Phase 2 as in Phase 1. The Fund will award allocations in the order of this "Final Rank Score," subject to applicants' meeting all other eligibility requirements; provided, however, that

the Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process. Most notably, in the case of applicants (or their Affiliates) that are prior year allocatees, the Fund will review the activities of the prior year allocatee to determine whether the entity has: (a) Effectively utilized its prior-year allocations; and (b) substantiated a need for additional allocation authority.

3. *Outstanding Reports.* In the case of an applicant, or an Affiliate of the applicant, that has previously received an award or allocation from the Fund through any Fund program, the Fund will consider and will deduct points for the applicant's (or its Affiliate's) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the Fund during the entity's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2007 and 2008).

C. *Allocations serving Non-Metropolitan counties.* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432), the Fund shall ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments (QEIs) under the NMTC Program. To this end, the Fund will ensure that the proportion of allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs; and ensure that at least 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. A Rural CDE is one that has over the past five years dedicated at least 50 percent of its activities to Non-Metropolitan counties and has committed that at least 50 percent of its NMTC activities will be conducted in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 99-04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions) and applied using 2000 census data.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with "preliminary" awards, in descending order of Final Rank Score, until the \$3.5 billion in allocation authority is expended. Once these "preliminary" award amounts are determined, the Fund will then analyze the allocatee pool to determine whether the two Non-Metropolitan

proportionality objectives have been met.

The Fund will first examine the "preliminary" awards and allocatees to determine whether the percentage of allocatees that are Rural CDEs is, at a minimum, equal to the percentage of applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional allocatees within the \$3.5 billion allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all allocatees in the pool.

The Fund will then ensure that the pool of allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The Fund will first apply the "minimum" percentage of QLICIs that allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each allocatee (less whatever percentage the allocatee indicated would be retained for non-QLICI activities), and total these figures for all allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the allocatees, then the pool is considered balanced and the Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the allocatees, the Fund will consider requiring any or all of the Allocatees to direct up to the "maximum" percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties; taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties.

D. *Questions:* All outstanding reports or compliance questions should be directed to the Compliance Manager by e-mail at [cme@cdfi.treas.gov](mailto:cme@cdfi.treas.gov); by telephone at (202) 622-8226; by facsimile at (202) 622-6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOAA through April 6, 2009. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on April 6, 2009 until after the funding application deadline of April 8, 2009.

E. *Right of rejection:* The Fund reserves the right to reject any NMTC

allocation application in the case of a prior Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an Affiliate of the applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the Fund.

The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings and markets served) set forth in the allocation application(s) related to such prior allocation(s). The Fund also reserves the right to reject any NMTC allocation application in the case of an Affiliate of the applicant that is a prior Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The Fund reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the Fund that adversely affects an applicant's eligibility for an award, adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the Fund may permit reviewer(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. Reviewers will not contact applicants without the prior approval of the Fund. At this point in the process, an applicant may be required to submit additional information about its application in

order to assist the Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including, without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or Affiliates of applicants) that are regulated by the Federal government or a State agency (or comparable entity), the Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or Affiliates of applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the Fund, in its sole discretion, related to the applicant and its officers, directors, owners, partners and key employees.

Each applicant will be informed of the Fund's award decision either through a Notice of Allocation if selected for an allocation (see Section VI.A. of this NOAA) or a declination letter, if not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources.

The Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate. If said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's allocation decisions. The Fund's allocation decisions are final.

## **VI. Award Administration Information**

*A. Notice of Allocation:* The Fund will signify its selection of an applicant as an Allocatee by delivering a signed Notice of Allocation to the applicant. The Notice of Allocation will contain

the general terms and conditions underlying the Fund's provision of an NMTC Allocation including, but not limited to, the requirement that an Allocatee and the Fund enter into an Allocation Agreement. The applicant must execute the Notice of Allocation and return it to the Fund. By executing a Notice of Allocation, the Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, information (including administrative errors) comes to the attention of the Fund that adversely affects the Allocatee's eligibility for an award, adversely affects the Fund's evaluation or scoring of the Allocatee's application, or indicates fraud or mismanagement on the part of the Allocatee, the Fund may, in its discretion and without advance notice to the Allocatee, terminate the Notice of Allocation or take such other actions as it deems appropriate. Moreover, by executing a Notice of Allocation, an Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, the Fund determines that the Allocatee is not in compliance with the terms of any prior assistance agreement, award agreement, and/or Allocation Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Allocatee, either terminate the Notice of Allocation or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind the allocation and the Notice of Allocation if the Allocatee fails to return the Notice of Allocation, signed by the authorized representative of the Allocatee, along with any other requested documentation, by the deadline set by the Fund.

*1. Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior Fund awardee or Allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Allocation or thereafter, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on an Allocatee's ability to issue QEIs to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or

Allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

*2. Pending resolution of noncompliance:* If an Allocatee is a prior awardee or Allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of an Allocatee is a prior Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

*3. Default status:* If, at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has submitted a complete and timely report

demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Affiliate of the Allocatee is a prior Fund awardee or Allocatee under any Fund program, and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior awardee or Allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. *Termination in default:* If (i) within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Allocatee that is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to such organization; and (iii) the final reporting period end date for the applicable terminated agreement falls in such organization's 2007 or 2008 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors. Furthermore, if (i) Within the 12-month period prior to entering into an Allocation Agreement through this NOAA, the Fund has made a final determination that an Affiliate of the Allocatee is a prior Fund awardee or Allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the Fund has provided written notification of such determination to the defaulting entity; and (iii) the final reporting period end date for the applicable terminated agreement falls in such defaulting entity's 2007 or 2008 fiscal year, the Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors.

B. *Allocation Agreement:* Each applicant that is selected to receive a NMTC Allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (e.g., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the applicant may obtain QEIs from investors; (v) reporting requirements for all applicants receiving NMTC Allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC Allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the Fund reserves the right to require an Allocatee to provide supporting documentation evidencing

that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The Fund reserves the right, in its sole discretion, to rescind its Notice of Allocation if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

C. *Fees:* The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* The Fund will collect information, on at least an annual basis, from all applicants that are awarded NMTC Allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC Allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

## VII. Agency Contacts

The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through April 6, 2009. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on April 6, 2009 until after the allocation application deadline of April 8, 2009. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at <http://www.cdfifund.gov>. The

Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622-2455 or by e-mail at [ithelpdesk@cdfi.treas.gov](mailto:ithelpdesk@cdfi.treas.gov). People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's Web site should call (202) 622-2455 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov), by telephone at (202) 622-6355, by facsimile at (202) 622-7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the

administrative requirements of this NOAA, contact the Fund's Awards Manager by e-mail at [grantsmanagement@cdfi.treas.gov](mailto:grantsmanagement@cdfi.treas.gov), by telephone at (202) 622-8226, by facsimile at (202) 622-6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622-3040, by facsimile at (202) 622-4753, or by mail at 1111 Constitution Avenue, NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

E. *Legal counsel support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a

Legal Review," found on the Fund's Web site at <http://www.cdfifund.gov>.

#### VIII. Information Sessions

In connection with this NOAA, the Fund may conduct multiple information sessions around the country at locations to be announced, as well as an information session that will be produced in Washington, DC and broadcast over the internet via Webcasting. For further information on these upcoming information sessions, please visit the Fund's Web site at <http://www.cdfifund.gov> or call the Fund at (202) 622-9046.

**Authority:** 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D-1.

Dated: January 13, 2009.

**Donna J. Gambrell,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E9-1131 Filed 1-21-09; 8:45 am]

**BILLING CODE 4810-70-P**



# Federal Register

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**Thursday,  
January 22, 2009**

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## **Part II**

### **The President**

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**Proclamation 8340—Martin Luther King, Jr., Federal Holiday, 2009**

**Proclamation 8342—To Suspend Entry as Immigrants and Nonimmigrants of Foreign Government Officials Responsible for Failing to Combat Trafficking in Persons**

**Executive Order 13487—Establishment of a Temporary Organization to Facilitate United States Government Support for Afghanistan**

**Memorandum of January 16, 2009—Designating Officers of the National Aeronautics and Space Administration To Act as Administrator**

**Memorandum of January 16, 2009—Designation of Officers to Act as President of the Overseas Private Investment Corporation**



**Title 3—****Proclamation 8340 of January 15, 2009****The President****Martin Luther King, Jr., Federal Holiday, 2009****By the President of the United States of America****A Proclamation**

On the Martin Luther King, Jr., Federal Holiday, we recognize one of history's most consequential advocates for equality and civil rights, and we celebrate his powerful message of justice and hope. Our Nation is better because Dr. King was a man of courage and vision who understood that love and compassion will always triumph over bitterness and hatred.

As Americans, we believe it is self-evident that all men are created equal and that freedom is not a grant of government but a gift from the Author of Life. Dr. King trusted in these beliefs articulated in our founding documents even when our country's practices did not live up to its promises. He roused the conscience of a complacent Nation by drawing attention to the ugliness of discrimination and segregation and by calling on Americans to live up to our guarantee of equality.

Our Nation has seen tremendous progress in redeeming the ideals of America and protecting every person's God-given rights. The historic election of Barack Obama as President of the United States reflects the real advances our Nation has made in the fight against the bigotry that Dr. King opposed. More work remains, though, and we must heed Dr. King's words that "injustice anywhere is a threat to justice everywhere." By continuing to spread his message and demanding that the equal rights he fought for are extended to all people, we can ensure that the dignity of every person is respected and that the hope for a better tomorrow reaches every community throughout the world.

As we observe Dr. King's birthday, we commemorate his leadership and strength of character. We go forward with confidence that if we remain true to our founding principles, our Nation will continue to advance the cause of justice and remain a beacon of hope to people everywhere.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 19, 2009, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service programs and activities in honor of Dr. King's life and legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E9-1526  
Filed 1-21-09; 11:15 am]  
Billing code 3195-W9-P

## Presidential Documents

### Proclamation 8342

### To Suspend Entry As Immigrants And Nonimmigrants of Foreign Government Officials Responsible for Failing To Combat Trafficking In Persons

By the President of the United States of America

#### A Proclamation

In order to foster greater resolve to address trafficking in persons (TIP), specifically in punishing acts of trafficking and providing protections to the victims of these crimes, consistent with the Trafficking Victims Protection Act of 2000, as amended (the "Act") (22 U.S.C. 7101 *et seq.*), it is in the interests of the United States to restrict the international travel and to suspend entry into the United States, as immigrants or nonimmigrants, of certain senior government officials responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and whose governments have been ranked more than once as Tier 3 countries, which represent the worst anti-TIP performers, in the Department of State's annual Trafficking in Persons Report, and for which I have made a determination pursuant to section 110(d)(1)-(2) or (4) of the Act. The Act reflects international antitrafficking standards that guide efforts to eradicate this modern-day form of slavery around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

**Section 1.** The entry into the United States, as immigrants or nonimmigrants, of the following aliens is hereby suspended:

(a) Senior government officials—defined as the heads of ministries or agencies and officials occupying positions within the two bureaucratic levels below those top positions—responsible for domestic law enforcement, justice, or labor affairs who have impeded their governments' antitrafficking efforts, have failed to implement their governments' antitrafficking laws and policies, or who otherwise bear responsibility for their governments' failures to take steps recognized internationally as appropriate to combat trafficking in persons, and who are members of governments for which I have made a determination pursuant to section 110(d)(1)-(2) or (4) of the Act, in the current year and at least once in the preceding 3 years;

(b) The spouses of persons described in subsection (a) of this section.

**Sec. 2.** Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

**Sec. 3.** Persons covered by sections 1 or 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

**Sec. 4.** Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

**Sec. 5.** The Secretary of State shall implement this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of Homeland Security, may establish.

**Sec. 6.** This proclamation is effective immediately. It shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such determination by the Secretary of State shall be published in the *Federal Register*.

**Sec. 7.** This proclamation is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E9-1529

Filed 1-21-09; 11:15 am]

Billing code 3195-W9-P

## Presidential Documents

Executive Order 13487 of January 16, 2009

### Establishment of a Temporary Organization To Facilitate United States Government Support for Afghanistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 202 of the Revised Statutes (22 U.S.C. 2656) and section 3161 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. *Establishment.*** There is established within the Department of State, in accordance with section 3161 of title 5, United States Code, a temporary organization to be known as the Afghanistan Support Office (ASO).

**Sec. 2. *Purpose of the Temporary Organization.*** The purpose of the ASO shall be to perform the specific project of supporting executive departments and agencies in preventing Afghanistan from becoming a safe haven for terrorists, facilitating Afghanistan's progress to self-sufficiency, and maintaining an effective diplomatic presence in Afghanistan.

**Sec. 3. *Functions of the Temporary Organization.*** In carrying out its purpose set forth in section 2, the ASO shall:

(a) support executive departments and agencies in building the civilian capabilities of the Government of Afghanistan, including expansion of central services by the Government of Afghanistan, development of a thriving private sector economy, and improvement in the governance of Afghanistan's territory and borders; and

(b) perform such other functions related to the specific project set forth in section 2 as the Secretary of State (Secretary) may assign.

**Sec. 4. *Personnel and Administration.*** The ASO shall be headed by a Director selected by the Secretary. The ASO shall be jointly based in Washington, D.C., and Afghanistan, and the Secretary of State shall seek accreditation of employees as members of the United States Embassy Kabul as necessary.

**Sec. 5. *General Provisions.*** (a) This order shall be implemented in accordance with applicable law, subject to the availability of appropriations, and consistent with presidential guidance.

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

(c) The ASO shall terminate at the end of the maximum period permitted by section 3161(a)(1) of title 5, United States Code, unless sooner terminated by the Secretary.



THE WHITE HOUSE,  
*January 16, 2009*

[FR Doc. E9-1538  
Filed 1-21-09; 11:15 am]  
Billing code 3195-W9-P

## Presidential Documents

Memorandum of January 16, 2009

### Designation of Officers of the National Aeronautics And Space Administration To Act as Administrator

#### Memorandum for the Administrator of the National Aeronautics and Space Administration

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

**Section 1. Order of Succession.** Subject to the provisions of section 2 of this memorandum, the following officials of the National Aeronautics and Space Administration (NASA), in the order listed, shall act as and perform the functions and duties of the office of the Administrator of NASA (Administrator), during any period in which both the Administrator and Deputy Administrator of NASA (Deputy Administrator) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator, until such time as the Administrator or Deputy Administrator is able to perform the functions and duties of that office:

- (a) Associate Administrator;
- (b) Chief of Staff to the NASA Administrator;
- (c) Director for Johnson Space Flight Center;
- (d) Director for Kennedy Space Flight Center; and
- (e) Director for Marshall Space Flight Center.

**Sec. 2. Exceptions.** (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Administrator unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

**Sec. 3.** This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

**Sec. 4.** You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "Barack Obama", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,  
Washington, January 16, 2009

[FR Doc. E9-1539  
Filed 1-21-09; 11:15 am]  
Billing code 7510-13-M

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## Presidential Documents

Memorandum of January 16, 2009

### Designation of Officers to Act as President of the Overseas Private Investment Corporation

#### Memorandum for the President of the Overseas Private Investment Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

**Section 1. Order of Succession.** Subject to the provisions of section 2 of this memorandum, the following officials of the Overseas Private Investment Corporation, in the order listed, shall act as and perform the functions and duties of the office of the President of the Overseas Private Investment Corporation (POPIC), during any period in which the POPIC has died, resigned, or otherwise become unable to perform the functions and duties of the office of POPIC, until such time as the POPIC is able to perform the functions and duties of that office:

- (a) Executive Vice President;
- (b) Vice President and General Counsel;
- (c) Vice President and Chief Financial Officer;
- (d) Deputy General Counsel; and
- (e) Director of Operations.

**Sec. 2. Exceptions.**

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as POPIC pursuant to this memorandum.

(b) No individual listed in section 1 shall act as POPIC unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting POPIC.

**Sec. 3.** This memorandum is intended to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

**Sec. 4.** You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

THE WHITE HOUSE,  
Washington, January 16, 2009

[FR Doc. E9-1541  
Filed 1-21-09; 11:15 am]  
Billing code 3210-01-M



# Federal Register

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**Thursday,  
January 22, 2009**

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## **Part III**

## **The President**

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**Proclamation 8341—To Implement The  
United States-Peru Trade Promotion  
Agreement And for Other Purposes  
Executive Order 13488—Granting  
Reciprocity on Expected Service and  
Federal Contractor Employee Fitness and  
Reinvestigating Individuals in Positions of  
Public Trust**



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# Presidential Documents

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Title 3—

Proclamation 8341 of January 16, 2009

The President

## To Implement The United States-Peru Trade Promotion Agreement And for Other Purposes

By the President of the United States of America

### A Proclamation

1. On April 12, 2006, the United States entered into the United States-Peru Trade Promotion Agreement (the “Agreement”), and on June 24 and June 25, 2007, the Parties to the Agreement signed a protocol amending the Agreement. Congress approved the Agreement as amended in section 101(a) of the United States-Peru Trade Promotion Agreement Implementation Act (the “Implementation Act”) (Public Law 110–138, 121 Stat. 1455) (19 U.S.C. 3805 note).

2. Section 105(a) of the Implementation Act authorizes the President to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement.

3. Section 201 of the Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Articles 2.3, 2.5, 2.6, 3.3.13 and Annex 2.3 of the Agreement.

4. Section 201(d) of the Implementation Act authorizes the President to take such action as may be necessary in implementing the tariff-rate quotas set forth in Appendix I to the Schedule of the United States to Annex 2.3 of the Agreement to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

5. Consistent with section 201(a)(2) of the Implementation Act, Peru is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP) on the date the Agreement enters into force. Further, consistent with section 604 of the Trade Act of 1974, as amended (the “1974 Act”) (19 U.S.C. 2483), I have determined that other technical and conforming changes to the Harmonized Tariff Schedule of the United States (HTS) are necessary to reflect that Peru is no longer eligible to receive the benefits of the GSP.

6. Section 203 of the Implementation Act sets forth certain rules for determining whether a good is an originating good for the purpose of implementing preferential tariff treatment provided for under the Agreement. I have decided that it is necessary to include these rules of origin, together with particular rules applicable to certain other goods, in the HTS.

7. Section 203(o) of the Implementation Act authorizes the President to determine that a fabric, yarn, or fiber is or is not available in commercial quantities in a timely manner in the United States and Peru; to establish procedures governing the request for any such determination and ensuring appropriate public participation in any such determination; to add any fabric, yarn, or fiber determined to be not available in commercial quantities in a timely manner in the United States and Peru to the list in Annex 3-B of the Agreement in a restricted or unrestricted quantity; to eliminate a restriction on the quantity of a fabric, yarn, or fiber within 6 months

after adding the fabric, yarn, or fiber to the list in Annex 3-B of the Agreement in a restricted quantity; and to restrict the quantity of, or remove from the list in Annex 3-B of the Agreement, certain fabrics, yarns, or fibers.

8. Section 208 of the Implementation Act authorizes the President to take certain enforcement actions relating to trade with Peru in textile and apparel goods.

9. Subtitle B of title III of the Implementation Act authorizes the President to take certain actions in response to a request by an interested party for relief from serious damage or actual threat thereof to a domestic industry producing certain textile or apparel articles.

10. Executive Order 11651 of March 3, 1972, as amended, established the Committee for the Implementation of Textile Agreements (CITA), consisting of representatives of the Departments of State, the Treasury, Commerce, and Labor, and the Office of the United States Trade Representative, with the representative of the Department of Commerce as Chairman, to supervise the implementation of textile trade agreements. Consistent with section 301 of title 3, United States Code, when carrying out functions vested in the President by statute and assigned by the President to CITA, the officials collectively exercising those functions are all to be officers required to be appointed by the President with the advice and consent of the Senate.

11. Presidential Proclamation 7971 of December 22, 2005, implemented the United States-Morocco Free Trade Agreement (USMFTA). The proclamation implemented, pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (the "USMFTA Act") (Public Law 108-302, 118 Stat. 1103) (19 U.S.C. 3805 note), the staged reductions in rates of duty that I determined to be necessary or appropriate to carry out or apply certain provisions of the USMFTA, including Articles 2.5 and 2.6. The proclamation inadvertently omitted two modifications to the HTS necessary to carry out the provisions of Articles 2.5 and 2.6 of the USMFTA. I have determined that technical corrections to the HTS are necessary to provide the intended tariff treatment under Articles 2.5 and 2.6 of the USMFTA.

12. Presidential Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement (USBFTA). The proclamation implemented, pursuant to section 201 of the United State-Bahrain Free Trade Agreement Implementation Act (the "USBFTA Act") (Public Law 109-169, 119 Stat. 3581), the staged reductions in rates of duty that I determined to be necessary or appropriate to carry out or apply certain provisions of the USBFTA, including Articles 2.5 and 2.6. The proclamation inadvertently omitted two modifications to the HTS necessary to carry out the provisions of Articles 2.5 and 2.6 of the USBFTA. I have determined that technical corrections to the HTS are necessary to provide the intended tariff treatment under Articles 2.5 and 2.6 of the USBFTA.

13. Presidential Proclamation 8331 of December 23, 2008, implemented the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) for trade with Costa Rica. The proclamation implemented, pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the "CAFTA-DR Act") (Public Law 109-53, 119 Stat. 467) (19 U.S.C. 4031), the duty treatment necessary to carry out or apply Articles 3.3 and 3.27, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods) and 3.27, of the CAFTA-DR. I have determined that technical corrections to the HTS are necessary to provide the intended duty treatment under the CAFTA-DR.

14. Section 604 of the 1974 Act, as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other Acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 604 of the 1974 Act; sections 105(a), 201, 203, 208, and subtitle B of title III of the Implementation Act; and section 301 of title 3, United States Code, and having made the determination under section 101(b) of the Implementation Act necessary for the exchange of notes, do hereby proclaim: (1) In order to provide generally for the preferential tariff treatment being accorded under the Agreement, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the Agreement, to provide certain other treatment to originating goods of Peru for the purposes of the Agreement, to provide tariff-rate quotas with respect to certain originating goods of Peru, to reflect Peru's removal from the enumeration of designated beneficiary developing countries for purposes of the GSP, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex I of Publication 4058 of the United States International Trade Commission, entitled, "Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Peru Trade Promotion Agreement", which is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty elimination provided for in the Agreement and to provide for future staged reductions in duties for originating goods of Peru for purposes of the Agreement, the HTS is modified as provided in Annex II of Publication 4058, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3) The amendments to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex II to Publication 4058.

(4) The Secretary of Commerce is authorized to exercise my authority under section 105(a) of the Implementation Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(5) The United States Trade Representative (USTR) is authorized to exercise my authority under section 201(d) of the Implementation Act to take such action as may be necessary in implementing the tariff-rate quotas set forth in Appendix I to the Schedule of the United States to Annex 2.3 of the Agreement to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States. This action is set forth in Annex I of Publication 4058.

(6) The CITA is authorized to exercise my authority under section 203(o) of the Implementation Act to determine that a fabric, yarn, or fiber is or is not available in commercial quantities in a timely manner in the United States and Peru; to establish procedures governing the request for any such determination and ensuring appropriate public participation in any such determination; to add any fabric, yarn, or fiber determined to be not available in commercial quantities in a timely manner in the United States and Peru to the list in Annex 3-B of the Agreement in a restricted or unrestricted quantity; to eliminate a restriction on the quantity of a fabric, yarn, or fiber within 6 months after adding the fabric, yarn, or fiber to the list in Annex 3-B of the Agreement in a restricted quantity; and to restrict the quantity of, or remove from the list in Annex 3-B of the Agreement, certain fabrics, yarns, or fibers.

(7) The CITA is authorized to exercise my authority under section 208 of the Implementation Act to exclude certain textile and apparel goods from the customs territory of the United States; to determine whether an enterprise's production of, and capability to produce, goods are consistent with statements by the enterprise; to find that an enterprise has knowingly

or willfully engaged in circumvention; and to deny preferential tariff treatment to textile and apparel goods.

(8) The CITA is authorized to exercise the functions of the President under subtitle B of title III of the Implementation Act to review requests, and to determine whether to commence consideration of such requests; to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment; to determine whether imports of a Peruvian textile or apparel article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article; and to provide relief from imports of an article that is the subject of such a determination.

(9) The CITA, after consultation with the Commissioner of Customs (the "Commissioner"), is authorized to consult with representatives of Peru for the purpose of identifying particular textile or apparel goods of Peru that are mutually agreed to be handloomed fabrics, handmade goods made of such handloomed fabrics, folklore goods, or handmade goods that substantially incorporate a historical or traditional regional design or motif, as provided in Article 3.3.12 of the Agreement. The Commissioner shall take actions as directed by the CITA to carry out any such determination.

(10) The USTR is authorized to fulfill my obligations under section 104 of the Implementation Act to obtain advice from the appropriate advisory committees and the United States International Trade Commission on the proposed implementation of an action by presidential proclamation; to submit a report on such proposed action to the appropriate congressional committees; and to consult with those congressional committees regarding the proposed action.

(11) The USTR is authorized to modify U.S. note 29 to subchapter XXII of chapter 98 of the HTS in a notice published in the Federal Register to reflect modifications pursuant to paragraph (6) of this proclamation by the CITA to the list of fabrics, yarns, or fibers in Annex 3-B of the Agreement.

(12) In order to make technical corrections necessary to provide the intended duty treatment under Articles 2.5 and 2.6 of the USMFTA, Articles 2.5 and 2.6 of the USBFTA, and the CAFTA-DR, the HTS is modified as set forth in Annex III of Publication 4058.

(13) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E9-1573

Filed 1-21-09; 2:30 pm]

Billing code 3195-W9-P

## Presidential Documents

Executive Order 13488 of January 16, 2009

### Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and in order to simplify and streamline the system of Federal Government personnel investigative and adjudicative processes to make them more efficient and effective, it is hereby ordered as follows:

**Section 1. Policy.** (a) When agencies determine the fitness of individuals to perform work as employees in the excepted service or as contractor employees, prior favorable fitness or suitability determinations should be granted reciprocal recognition, to the extent practicable.

(b) It is necessary to reinvestigate individuals in positions of public trust in order to ensure that they remain suitable for continued employment.

**Sec. 2. Definitions.** For the purposes of this order:

(a) "Agency" means an executive agency as defined in section 105 of title 5, United States Code, but does not include the Government Accountability Office.

(b) "Contractor employee" means an individual who performs work for or on behalf of any agency under a contract and who, in order to perform the work specified under the contract, will require access to space, information, information technology systems, staff, or other assets of the Federal Government. Such contracts, include, but are not limited to:

(i) personal services contracts;

(ii) contracts between any non-Federal entity and any agency; and

(iii) sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the agency.

(c) "Excepted service" has the meaning provided in section 2103 of title 5, United States Code, but does not include those positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to Office of Personnel Management appointing authorities.

(d) "Fitness" is the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee.

(e) "Fitness determination" means a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee. A favorable fitness determination is not a decision to appoint or contract with an individual.

(f) "Position of Public Trust" has the meaning provided in 5 *CFR* Part 731.

(g) "Suitability" has the meaning and coverage provided in *CFR* Part 731.

**Sec. 3. Agency Authority to Set Fitness Criteria and Determine Equivalency.** The authority to establish criteria for making fitness determinations remains within the discretion of the agency head. Agency heads also have the discretion to determine whether their criteria are equivalent to suitability standards established by the Office of Personnel Management. Agency heads shall take into account Office of Personnel Management guidance when exercising this discretion.

**Sec. 4. Reciprocal Recognition of Fitness and Suitability Determinations.** (a) Except as provided by subsection (b) of this section, agencies making fitness determinations shall grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the gaining agency uses criteria for making fitness determinations equivalent to suitability standards established by the Office of Personnel Management;

(ii) the prior favorable fitness or suitability determination was based on criteria equivalent to suitability standards established by the Office of Personnel Management; and

(iii) the individual has had no break in employment since the favorable determination was made.

(b) Exceptions to Reciprocal Recognition. A gaining agency is not required to grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the new position requires a higher level of investigation than previously conducted for that individual;

(ii) an agency obtains new information that calls into question the individual's fitness based on character or conduct; or

(iii) the individual's investigative record shows conduct that is incompatible with the core duties of the new position.

**Sec. 5. Reinvestigation of Individuals in Positions of Public Trust.** Individuals in positions of public trust shall be subject to reinvestigation under standards (including but not limited to the frequency of such reinvestigation) as determined by the Director of the Office of Personnel Management, to ensure their suitability for continued employment.

**Sec. 6. Responsibilities.** (a) An agency shall report to the Office of Personnel Management the nature and results of the background investigation and fitness determination (or later changes to that determination) made on an individual, to the extent consistent with law.

(b) The Director of the Office of Personnel Management is delegated authority to implement this order, including the authority to issue regulations and guidance governing suitability, or guidance related to fitness, as the Director determines appropriate.

**Sec. 7. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall not suspend, impede, or otherwise affect Executive Order 10450 of April 27, 1953, as amended, or Executive Order 13467 of June 30, 2008;

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

**Sec. 8. *Effective Date and Applicability.*** This order is effective upon issuance and is applicable to individuals newly appointed to excepted service positions or hired as contractor employees beginning 90 days from the effective date of this order.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

THE WHITE HOUSE,  
*January 16, 2009.*

[FR Doc. E9-1574  
Filed 1-21-09; 4:15 pm]  
Billing code 3195-W9-P

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**S.J. Res. 3/P.L. 111-1**  
Ensuring that the compensation and other emoluments attached to the office of Secretary of the

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A cumulative List of Public Laws for the second session of the 110th Congress will be published in the **Federal Register** on January 30, 2009.

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