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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 585

[Docket No. OTS–2009–0002]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

AGENCIES: Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is September 30, 2009.

DATES: *Effective Date*: The final rule is effective on March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and International Activities, Examinations, Supervision and Consumer Protection, (202) 906–7488, Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption is set to expire on March 31, 2009, unless a case-by-case exemption is filed prior to that expiration date.[1]

OTS is extending the expiration date of the temporary exemption to September 30, 2009. This extension will avoid needless disruptions of SLHC operations while OTS continues to review the public comments and develop a final rule addressing these comments. OTS has concluded that this extension of the exemption is consistent with the purposes of section 19(e) of the FDIA.

Regulatory Findings

Notice and Comment and Effective Date

For the reasons set out in the interim final rule,[2] OTS has concluded that: Notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

Regulatory Flexibility Act

For the reasons stated in the interim final rule,[3] OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,[4] OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

[1] This temporary exemption originally was scheduled to expire on September 5, 2007. OTS extended the expiration date to March 1, 2008, 72 FR 50644 (September 4, 2007), then to June 1, 2008, 73 FR 10985 (February 29, 2008) to November 3, 2008. 73 FR 30736 (May 29, 2008), and most recently to March 31, 2009. 73 FR 65257 (November 3, 2008).

[2] 72 FR at 25953.

[3] 72 FR at 25953–54.

[4] 72 FR at 25954.

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. Revise § 585.100(b)(2) introductory text to read as follows

§ 585.100 Who is exempt from the prohibition under this part?

* * * * *

(b) *Temporary exemption.* * * *

(2) This exemption expires on September 30, 2009, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: March 25, 2009.

By the Office of Thrift Supervision.

Scott M. Polakoff,

Acting Director.

[FR Doc. E9–7202 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0759; Directorate Identifier 2008–NE–02–AD; Amendment 39–15824; AD 2009–04–18]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for PW models JT9D–7, –7A, –7AH, –7H, –7F, and –7J turbofan engines. This AD requires initial and repetitive borescope inspections of the 2nd stage high-pressure turbine (HPT) rotor and stator assembly. This AD results from an uncontained failure of a 2nd stage HPT rotor disk that caused the engine to separate from the airplane. We are issuing this AD to prevent failure of the 2nd stage HPT rotor disk, which could result in uncontained engine failure, damage to the airplane, and the engine separating from the airplane.

DATES: This AD becomes effective May 5, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 5, 2009.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov*; telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to PW models JT9D–7, –7A, –7AH, –7H, –7F, and –7J turbofan engines. We published the proposed AD in the **Federal Register** on July 10, 2008 (73 FR 39627). That action proposed to require an initial and repetitive borescope inspection of the 2nd stage HPT vane assembly.

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

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

One commenter asks us to change the compliance time from ''cycles-since-overhaul'' to ''cycles-since-last installation of the second stage HPT vanes.'' The commenter states that second stage HPT vanes might be removed and replaced at times other than module overhaul, such as for module repair.

We agree. We changed paragraph (f) of the proposed AD from ''Within 100 cycles-in-service (CIS) after the effective date of this AD, or within 1,000 CIS after the last HPT module overhaul * * *'' to ''Within 100 cycles-in-service (CIS) after the effective date of this AD, or within 1,000 CIS after the last installation of the second stage HPT vanes * * *''

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 240 engines installed on airplanes of U.S. registry. We also estimate that it will take about 5 work-hours per engine to perform the proposed actions, that each engine might require two inspections, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $192,000.

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–04–18 Pratt & Whitney: Amendment 39–15824. Docket No. FAA–2008–0759; Directorate Identifier 2008–NE–02–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–7, –7A, –7AH, –7H, –7F, and –7J turbofan engines. These engines are installed on, but not limited to, Boeing 747 series airplanes.

Unsafe Condition

(d) This AD results from an uncontained failure of a 2nd stage high-pressure turbine (HPT) rotor disk that caused the engine to separate from the airplane. We are issuing this AD to prevent failure of the 2nd stage HPT rotor disk, which could result in uncontained engine failure, damage to the airplane, and the engine separating from the airplane.

Compliance

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

Initial Borescope Inspection

(f) Within 100 cycles-in-service (CIS) after the effective date of this AD, or within 1,000 CIS after the last installation of the second stage HPT vanes, whichever occurs later, do the following:

(1) Use the Accomplishment Instructions of PW Alert Service Bulletin (ASB) JT9D A6488, Revision 1, dated April 18, 2008, to borescope-inspect the 2nd stage HPT rotor and stator assembly either on-wing or in the shop.

(2) If you see any damage or contact between the 2nd stage HPT vanes and the 2nd stage HPT rotor, remove the engine from service.

Repetitive Borescope Inspection

(g) Thereafter, within 1,000 cycles-since-last inspection, do the following:

(1) Use the Accomplishment Instructions of PW ASB JT9D A6488 Revision 1, dated April 18, 2008, to borescope-inspect the 2nd stage HPT rotor and stator assembly either on-wing or in the shop.

(2) If you see any damage or contact between the 2nd stage HPT vanes and the 2nd stage HPT rotor, remove the engine from service.

Optional Terminating Action

(h) Installing the 2nd stage HPT vanes as specified in paragraphs 1.B.(1) through 1.B.(32) of the JT9D–7 Engine Manual Revision 122, dated February 15, 2008, terminates the repetitive inspection requirement specified in paragraph (g) of this AD.

Alternative Methods of Compliance

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

Related Information

(j) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov*; telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use the service information specified in the following Table 1 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1—INCORPORATION BY REFERENCE

Service information No.	Page	Revision	Date
Pratt & Whitney JT9D Engine Maintenance Manual PN 770408 ..... Total Pages—36	1001 through 1036	122	February 15, 2008.
Pratt & Whitney PW ASB JT9D A6488, Revision 1, dated April 18, 2008. Total Pages—21	All	1	April 18, 2008.

Issued in Burlington, Massachusetts, on March 17, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–6749 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0074; Directorate Identifier 2007–NM–151–AD; Amendment 39–15863; AD 2009–07–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–90–30 airplanes. This AD requires modifying the auxiliary hydraulic power system (including doing all applicable related investigative and corrective actions). This AD results from fuel system reviews conducted by the manufacturer, as well as reports of shorted wires in the right wheel well and evidence of arcing on the power cables of the auxiliary hydraulic pump. We are issuing this AD to prevent shorted wires or electrical arcing at the auxiliary hydraulic pump, which could result in a fire in the wheel well; and to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective May 5, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 5, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model MD–90–30 airplanes. That supplemental NPRM was published in the **Federal Register** on December 19, 2008 (73 FR 77555). That supplemental NPRM proposed to require modifying the auxiliary hydraulic system (including doing all applicable related investigative and corrective actions).

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

There are about 110 airplanes of the affected design in the worldwide fleet. This AD affects about 16 airplanes of U.S. registry. The actions take between 3 and 7 work-hours per airplane, depending on the configuration, at an average labor rate of $80 per work-hour. Required parts cost up to $5,343 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is up to $94,448, or $5,903 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2009–07–04 McDonnell Douglas: Amendment 39–15863. Docket No. FAA–2007–0074; Directorate Identifier 2007–NM–151–AD.

Effective Date

(a) This AD becomes effective May 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD90–29A021, Revision 1, dated August 29, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer, as well as reports of shorted wires in the right wheel well and evidence of arcing on the power cables of the auxiliary hydraulic pump. We are issuing this AD to prevent shorted wires or electrical arcing at the auxiliary hydraulic pump, which could result in a fire in the wheel well. We are also issuing this AD to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Modification

(f) Within 18 months after the effective date of this AD, modify the auxiliary hydraulic power system and do all applicable related investigative and corrective actions by accomplishing all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–29A021, Revision 1, dated August 29, 2008. Do all applicable related investigative and corrective actions before further flight.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin MD90–29A021, Revision 1, dated August 29, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on March 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6752 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0007; Directorate Identifier 2008–CE–072–AD; Amendment 39–15867; AD 2009–07–08]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Models PA–46–350P and PA–46R–350T Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–46–350P and PA–46R–350T airplanes. This AD requires you to inspect the 35-amp and 250-amp current limiters to verify they are installed in the proper locations and correct the installation if the current limiters are not installed in the proper locations. This AD also limits operation to ''only under day visual flight rules (VFR)'' until the current limiter installation is inspected and corrected. This AD results from three reports of incorrectly installed current limiters. We are issuing this AD to detect and correct incorrect installation of 35-amp and 250-amp current limiters, which could result in failure of the 35-amp current limiter if installed in the 250-amp location. This failure could lead to a total loss of electrical power.

DATES: This AD becomes effective on May 5, 2009.

On May 5, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2009–0007; Directorate Identifier 2008–CE–072–AD.

FOR FURTHER INFORMATION CONTACT: John Lee, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 994–6736; fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

On January 7, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Aircraft, Inc. Models PA–46–350P and PA–46R–350T airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 15, 2009 (74 FR 2425). The NPRM proposed to require an inspection to verify the 35-amp and 250-amp current limiters are installed in the proper locations and correct the installation if the current limiters are not installed in the proper locations. The NPRM also proposed to limit operation to only under day VFR until the current limiter installation is inspected and corrected.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 118 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not Applicable	$80	$9,440

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 per hour = $80	Not Applicable	$80

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2009–0007; Directorate Identifier 2008–CE–072–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding the following new AD:

2009–07–08 Piper Aircraft, Inc.: Amendment 39–15867; Docket No. FAA–2009–0007; Directorate Identifier 2008–CE–072–AD.

Effective Date

(a) This AD becomes effective on May 5, 2009.

Affected ADs

(b) None.

Applicability

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

Models	Serial Nos.
PA–46–350P ..	4636375 through 4636447.
PA–46R–350T	4692001 through 4692068.

Unsafe Condition

(d) This AD results from three reports of incorrectly installed current limiters. We are issuing this AD to detect incorrect installation of 35-amp and 250-amp current limiters, which could result in failure of the 35-amp current limiter if installed in the 250-amp location. This failure could lead to a total loss of electrical power.

Compliance

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

Actions	Compliance	Procedures
(1) Insert the following into the Limitations section of the airplane flight manual (AFM): ''Operate Only under Day Visual Flight Rules (VFR).'' You may remove the limitations specified in this paragraph after doing the action required in paragraphs (e)(2) and (e)(3) of this AD, as applicable.	Before further flight after May 5, 2009 (the effective date of this AD).	Under 14 CFR 43.7, the owner/operator holding at least a private pilot certificate is allowed to insert the information into the AFM as specified in paragraph (e)(1) of this AD. You may insert a copy of this AD into the Limitations section of the AFM to comply with this action. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with 14 CFR 43.9.
(2) Inspect the 35-amp and 250-amp current limiters for installation in the proper location.	Within 100 hours time-in-service after May 5, 2009 (the effective date of this AD).	Follow Piper Aircraft, Inc. Service Bulletin No. 2000, dated September 16, 2008.
(3) If you find any current limiter not in the proper location, reinstall the current limiter in the proper location.	Before further flight after the inspection required in paragraph (e)(2) of this AD.	Follow Piper Aircraft, Inc. Service Bulletin No. 2000, dated September 16, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: John Lee, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 994–6736; fax: (770) 703–6097. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Piper Aircraft, Inc. Service Bulletin No. 2000, dated September 16, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Issued in Kansas City, Missouri, on March 24, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6986 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1155; Directorate Identifier 2008–NM–146–AD; Amendment 39–15866; AD 2009–07–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires modifying the wire installation of the auxiliary hydraulic pump in the right wheel well of the main landing gear (MLG). This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent a tire burst when the MLG is in the retracted position from causing damage to the wire assembly of the auxiliary hydraulic pump and subsequent electrical arcing, creating the potential of an ignition source to the center wing tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 5, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 5, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* The service information is also available at *http://www.regulations.gov.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was

published in the **Federal Register** on October 31, 2008 (73 FR 64892). That NPRM proposed to require modifying the wire installation of the auxiliary hydraulic pump in the right wheel well of the main landing gear.

Comments

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

Request To Reduce Compliance Time

The Air Line Pilots Association, International (ALPA), asks that the compliance time for the modification in the NPRM be reduced. ALPA states that the 60-month compliance time is excessive given the potential consequences and adds that, since the wiring modification is estimated to take only 11 work hours per airplane, a shorter compliance time is recommended. ALPA suggests the compliance time be reduced to 24 months.

We do not agree to reduce the compliance time required by this AD. The compliance time was part of a Special Federal Aviation Regulation No. 88 (SFAR 88) safety analysis that consisted of a total package of mandated actions for each airplane model. The probability of failure and the burden on operators were considered when developing and applying consistent compliance times to all SFAR 88 rulemaking actions. In developing the 60-month compliance time for this AD action, we also considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet, and the practical aspects of an orderly modification of the fleet during regular maintenance periods. In addition, we considered the manufacturer's recommendation for an appropriate compliance time. After considering all the available information, we determined that performing the actions within 60 months represents an appropriate interval of time in which the required actions can be performed in a timely manner within the affected fleet, while still maintaining an adequate level of safety. In addition, operators can always comply with the required actions earlier than the compliance time in the AD. We have made no change to the AD in this regard.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry. We also estimate that it takes 11 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts cost is minimal. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $7,040, or $880 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–07–07 McDonnell Douglas: Amendment 39–15866. Docket No. FAA–2008–1155; Directorate Identifier 2008–NM–146–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 717–29A0009, dated July 31, 2008.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent a tire burst when the main landing gear (MLG) is in the retracted position from causing damage to the wire assembly of the auxiliary hydraulic pump and subsequent electrical arcing, creating the potential of an ignition source to the center wing tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation/Re-Routing

(f) Within 60 months after the effective date of this AD: Modify the wire installation of the auxiliary hydraulic pump in the right wheel well of the MLG by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 717–29A0009, dated July 31, 2008.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562)

627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 717–29A0009, dated July 31, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152. The service information is also available at *http://www.regulations.gov.*

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

Issued in Renton, Washington, on March 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7001 Filed 3–30–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–005–AD; Amendment 39–15849; AD 2006–08–08 R1]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to revise AD 2006–08–08, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes. AD 2006–08–08 currently requires you to repetitively eddy current inspect the wing lower spar cap in order to reach the safe life and, for certain Models AT–402A and AT–402B airplanes and those that incorporate or have incorporated Marburger Enterprises, Inc. (Marburger) winglets, lowers the safe life for the wing lower spar cap. Since we issued AD 2006–08–08, we have received information to update inspection intervals for the Models AT–401B, AT–402A, and AT–402B airplanes based on a revised damage tolerance analysis. Consequently, this AD would not only retain the actions of AD 2006–08–08, but would reduce the number of repetitive inspections for all affected Model AT–401B airplanes and certain Models AT–402A and AT–402B airplanes. We are issuing this AD to prevent fatigue cracks from occurring in the wing lower spar cap before the originally established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in wing separation and loss of control of the airplane.

DATES: This AD becomes effective on May 5, 2009.

As of April 21, 2006 (71 FR 19986, April 19, 2006), the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Drawing 21088, dated November 3, 2004; Snow Engineering Co. Process Specification 197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; and Snow Engineering Co. Service Letter 202, page 3, dated October 16, 2000, listed in this AD.

ADDRESSES: For service information identified in this AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; Internet: *http://www.airtractor.com*; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2006–23646; Directorate Identifier 2006–CE–005–AD.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For airplanes that do not incorporate and never have incorporated Marburger winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

On December 4, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 10, 2008 (73 FR 74999). The NPRM proposed to revise AD 2006–08–08 with a new AD that would not only retain the actions of AD 2006–08–08, but would reduce the number of repetitive inspections for all affected Model AT–401B airplanes and certain Models AT–402A and AT–402B airplanes.

The following table contains AD actions that address the wing spar safe life of the Air Tractor airplane fleet:

RELATED AD ACTIONS

AD No.	Affected air tractor airplane model	Issue date
2003–07–04	AT–300, AT–400, AT–400A, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, and AT–502B.	March 25, 2003.
2006–08–08	AT–400; AT–401, AT–401B, AT–402, AT–402A, and AT–402B	April 10, 2006.
2006–08–09	AT–802 and AT–802A	April 10, 2006.
2006–23–09	AT–602	October 26, 2006.
2006–24–10	AT–501, AT–502, AT–502A, AT–502B, and AT–503A	November 22, 2006.
2008–09–10	AT–300, AT–301, AT–302, AT–400, and AT–400A	April 18, 2008.

You may view these Airworthiness Directives at the following Internet Web site addresses: *http://rgl.faa.gov* or *http://www.gpoaccess.gov/fr/index.html.*

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Reduce Applicability

Mr. David Ligon, Air Tractor, comments that since issuance of AD 2006–08–08, the 21058–1/-2 lower spar cap is standard on production Models 401B, 402A, and 402B airplanes beginning with SN 1183. Consequently, he recommends that the applicability of the proposed AD end at SN 1182; production airplanes following this SN have installed the 21058–1/-2 lower spar cap.

We agree with the commenter and are changing the AD to reflect the installation of the 21058–1/-2 lower spar cap on production Models 401B, 402A, and 402B airplanes beginning with SN 1183.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 341 airplanes in the U.S. registry.

We estimate the following costs to do the inspection. We have no way of determining the number of airplanes that may need repair or modification as a result of any inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
* $500 to $800	Not Applicable	$500 to $800	$170,500 to $272,800.

* Eddy current inspections are an estimated flat cost that includes labor and use of equipment.

We estimate the following costs to do the modification. We have no way of determining the number of airplanes that may need this modification:

Labor cost	Parts cost	Total cost per airplane
120 work-hours × $80 = $9,600	$11,500	$21,100

We estimate the following costs to do the replacement. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
$16,500	$16,500	$33,000

* The labor costs of the replacement are an estimated flat cost that includes labor and use of equipment.

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 AD.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–005–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–08–08, Amendment 39–14563 (71 FR 19986, April 19, 2006), and adding the following new AD:

2006–08–08 R1 Air Tractor, Inc.: Amendment 39–15849; Docket No. FAA–2006–23646; Directorate Identifier 2006–CE–005–AD.

Effective Date

(a) This AD becomes effective on May 5, 2009.

Affected ADs

(b) This AD revises AD 2006–08–08, Amendment 39–14563.

Applicability

(c) This AD applies to certain Models AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that are certificated in any category. Use paragraph (c)(1) of this AD for affected airplanes that do not incorporate and never have incorporated Marburger winglets. Use paragraph (c)(3) of this AD for airplanes that have been modified to install lower spar caps, part number (P/N) 21058–1 and P/N 21058–2. Use paragraph (c)(4) of this AD for certain Models AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that incorporate or have incorporated Marburger winglets.

(1) The following table applies to airplanes that do not incorporate and never have incorporated Marburger winglets along with the safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers (SNs):

TABLE 1—SAFE LIFE FOR AIRPLANES THAT DO NOT INCORPORATE AND NEVER HAVE INCORPORATED MARBURGER WINGLETS

Model	SNs	Wing lower spar cap safe life (hours TIS)
AT–400	All beginning with 0416	13,300
AT–401	0662 through 0951	10,757
AT–401B	0952 through 1020, except 1015	6,948
AT–401B	1015 and 1021 through 1182	7,777
AT–402	0694 through 0951	7,440
AT–402A	0738 through 0951	7,440
AT–402A	0952 through 1020	2,000
AT–402A	1021 through 1182	2,300
AT–402B	0966 through 1020, except 1015	2,000
AT–402B	1015 and 1021 through 1182	2,300

(2) If piston-powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number (SN) turbine-powered aircraft.

(3) If you have an aircraft that has been modified by installing lower spar caps, P/N 21058–1 and P/N 21058–2, you must use a wing lower spar cap safe life of 9,800 hours TIS. No inspections are required to reach this life.

(i) Airplane SNs beginning with 1183 and those that have been modified with replacement spar caps, P/N 21058–1 and P/N 21058–2, are not eligible to have Supplemental Type Certificate (STC) No. SA00490LA, Marburger winglets, installed.

(ii) If your airplane currently has spar caps, P/N 21058–1 and P/N 21058–2, and winglets installed, then you must remove the winglets before further flight and you must contact the FAA at the address in paragraph (m)(1) of this AD for a new safe life.

(4) The following table applies to airplanes that incorporate or have incorporated Marburger winglets. These winglets are installed following STC No. SA00490LA. Use the winglet usage factor in Table 2 of paragraph (c)(4) of this AD, the wing lower spar cap safe life specified in Table 1 of paragraph (c)(1) of this AD, and the instructions included in Appendix 1 to this AD to determine the new safe life of airplanes that incorporate or have incorporated Marburger winglets:

TABLE 2—WINGLET USAGE FACTOR TO DETERMINE THE SAFE LIFE FOR AIRPLANES THAT INCORPORATE OR HAVE INCORPORATED MARBURGER WINGLETS PER STC NO. SA00490LA

Model	SNs	Winglet usage factor
AT–401	0662 through 0951	1.6
AT–401B	0952 through 1020, except 1015	1.1
AT–401B	1015 and 1021 through 1182	1.1
AT–402	0694 through 0951	1.6

TABLE 2—WINGLET USAGE FACTOR TO DETERMINE THE SAFE LIFE FOR AIRPLANES THAT INCORPORATE OR HAVE INCORPORATED MARBURGER WINGLETS PER STC NO. SA00490LA—Continued

Model	SNs	Winglet usage factor
AT–402A	0738 through 0951	1.6
AT–402A	0952 through 1020	1.1
AT–402A	1021 through 1182	1.1
AT–402B	0966 through 1020, except 1015	1.1
AT–402B	1015 and 1021 through 1182	1.1

Unsafe Condition

(d) This AD is the result of fatigue cracking of the wing main spar lower cap at the center splice joint outboard fastener hole. The actions specified in this AD are intended to detect and correct cracks in the wing main spar lower cap, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

Compliance

(e) *Safe Life Record:* For all affected airplanes, modify the applicable aircraft records (logbook) as follows to show the safe life for the wing lower spar cap listed in this AD (use the information from paragraph (c) of this AD and Appendix 1 to this AD, as applicable).

(1) Incorporate the following into the aircraft logbook: ''Following this AD, the wing lower spar cap is life limited to _____ hours time-in-service (TIS).'' Insert the applicable safe life number from the applicable tables in paragraph (c) of this AD and Appendix 1 to this AD.

(i) Do the logbook entry within the next 10 hours TIS after April 21, 2006 (the effective date of AD 2006–08–08).

(ii) A person holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(2) *Wing Spar Replacement:* For all affected airplanes, replace the wing lower spar cap following Snow Engineering Drawing Number 21088, dated November 3, 2004. Replace upon accumulating the safe life used in paragraph (e)(1) of this AD or within the next 50 hours TIS after April 21, 2006 (the effective date of AD 2006–08–08), whichever occurs later. The owner/operator may not do the spar cap replacement, unless he/she is a properly certified mechanic.

(f) *Inspection Requirements:* For all affected airplanes, except Model AT–402A, SNs 0952 through 1182, and except Model AT–402B, SNs 0966 through 1182, do the initial inspection of the outboard two lower spar cap bolt holes using the wing spar lower cap TIS schedules listed in Table 3. Follow Snow Engineering Co. Process Specification #197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002. After the initial inspection, perform repetitive inspections at the repetitive inspection intervals listed in Table 3. Use the same procedure for the repetitive inspections as for the initial inspection. If not already done, install access panels at the time of the first inspection following Snow Engineering Service Letter #202, page 3, dated October 16, 2000.

Note: Hours listed in the table are in hours TIS and the phrase ''within the _____ next hours'' refers to ''within the next _____ hours after April 21, 2006 (the effective date of AD 2006–08–08).''

TABLE 3—INSPECTION TIMES

Model	SNs	Current wing spar lower cap TIS hours	Initial inspection	Repetitive inspection interval (hours)
AT–400	All beginning with 0416	Greater than 7,750	Within the next 50 hours TIS or upon the accumulation of 8,000 hours TIS, whichever is later.	900
AT–401	0662–0951	Greater than 6,250	Within the next 50 hours TIS or upon the accumulation of 6,500 hours TIS, whichever is later.	700
AT–401	0662–0951	Greater than 4,350 but less than or equal to 6,250.	Within the next 250 hours TIS or upon the accumulation of 4,850 hours TIS, whichever is later.	700
AT–401	0662–0951	Greater than 2,750 but less than or equal to 4,350.	Within the next 500 hours TIS	700
AT–401	0662–0951	Less than or equal to 2,750.	Upon the accumulation of 3,250 hours TIS	700
AT–401B	0952–1020 except 1015	Greater than 3,950	Within the next 50 hours TIS or upon the accumulation of 4,200 hours TIS, whichever is later.	600
AT–401B	0952–1020 except 1015	Greater than 2,650 but less than or equal to 3,950.	Within the next 250 hours TIS or upon the accumulation of 3,150 hours TIS, whichever is later.	600
AT–401B	0952–1020 except 1015	Greater than 1,600 but less than or equal to 2,650.	Within the next 500 hours TIS	600
AT–401B	0952–1020 except 1015	Less than or equal to 1,600.	Upon the accumulation of 2,100 hours TIS	600
AT–401B	1015 and 1021–1124	Greater than 4,450	Within the next 50 hours TIS or upon the accumulation of 4,700 hours TIS, whichever is later.	600
AT–401B	1015 and 1021–1124	Greater than 3,000 but less than or equal to 4,450.	Within the next 250 hours TIS or upon the accumulation of 3,500 hours TIS, whichever is later.	600
AT–401B	1015 and 1021–1124	Greater than 1,850 but less than or equal to 3,000.	Within the next 500 hours TIS	600

TABLE 3—INSPECTION TIMES—Continued

Model	SNs	Current wing spar lower cap TIS hours	Initial inspection	Repetitive inspection interval (hours)
AT–401B	1015 and 1021–1124	Less than or equal to 1,850.	Upon the accumulation of 2,350 hours TIS	600
AT–401B	1125 through 1182	Greater than 4,450	Within the next 50 hours TIS or upon the accumulation of 4,700 hours TIS, whichever is later.	1,000
AT–401B	1125 through 1182	Greater than 3,000 but less than or equal to 4,450.	Within the next 250 hours TIS or upon the accumulation of 3,500 hours TIS, whichever is later.	1,000
AT–401B	1125 through 1182	Greater than 1,850 but less than or equal to 3,000.	Within the next 500 hours TIS	1,000
AT–401B	1125 through 1182	Less than or equal to 1,850.	Upon the accumulation of 2,350 hours TIS	1,000
AT–402/AT–402A.	0694–0951	Greater than 4,250	Within the next 50 hours TIS or upon the accumulation of 4,500, whichever is later.	700
AT–402/AT–402A.	0694–0951	Greater than 2,850 but less than or equal to 4,250.	Within the next 250 hours TIS or upon the accumulation of 3,350 hours TIS, whichever is later.	700
AT–402/AT–402A.	0694–0951	Greater than 1,750 but less than or equal to 2,850.	Within the next 500 hours TIS	700
AT–402/AT–402A.	0694–0951	Less than or equal to 1,750.	Upon the accumulation of 2,250 hours TIS	700

(g) *For all affected airplanes:* Before further flight after the inspection in which cracks are found, replace any cracked wing lower spar cap following Snow Engineering Drawing Number 21088, dated November 3, 2004.

(h) *For Models AT–400, AT–401, AT–401B, and AT–402 airplanes, SNs 0952 through 1182:* Report to the FAA any cracks detected as the result of each inspection required by paragraph (f) of this AD on the form in Figure 1 of this AD.

(1) Only if cracks are found, send the report within 10 days after the inspection required in paragraph (f) of this AD.

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

(i) *For all affected airplanes:* Upon the accumulation of the life used in paragraph (e)(1) of this AD or within the next 50 hours TIS after April 21, 2006 (the effective date of AD 2006–08–08), whichever occurs later, you must replace your wing lower spar cap before further flight following Snow Engineering Drawing Number 21088, dated November 3, 2004.

(j) *For Model AT–402A airplanes, SNs 0952 through 1182; and Model AT–402B airplanes, SNs 0966 through 1182:* In lieu of the safe life used in paragraph (e)(1) of this AD, you may eddy-current inspect and modify the wing lower spar cap as specified in the alternative method of compliance in AD 2006–08–08, which is approved for this AD (see paragraph (o) of this AD for more information).

(k) *For all affected airplanes (those complying with the actions in the AD or alternative method of compliance (AMOC)):* One of the following must do the inspection:

(1) A level 2 or 3 inspector certified in eddy current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or

(2) A person authorized to perform AD work and who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.

BILLING CODE 4910–13–P

AD 2006-08-08 R1 INSPECTION REPORT (REPORT ONLY IF CRACKS ARE FOUND)	
1. Inspection Performed By:	2. Phone:
3. Aircraft Model:	4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total Hours TIS:
7. Wing Total Hours TIS:	8. Lower Spar Cap Hours TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) ☐ Yes ☐ No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap Hours TIS: _____ Cracks found? ☐ Yes ☐ No
10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No	10a. If yes, specify (Description and hours TIS)
11. Date of AD inspection:_____	
12. Inspection Results: (Note: Report only if cracks are found)	12a. ☐ Left Hand ☐ Right Hand
12b. Crack Length:_____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No
12d. Corrective Action Taken:	

Mail report to: Manager, Fort Worth ACO, ASW-150, 2601 Meacham Blvd., Fort Worth, TX 76193-0150; or fax to (817) 222-5960

Figure 1

BILLING CODE 4910–13–C

Special Flight Permit

(l) Under 14 CFR 39.23, we are allowing special flight permits for the purpose of compliance with this AD under the following conditions:

(1) Only operate in day visual flight rules (VFR).

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO. For AMOC approval, send information to ATTN:

(1) For the airplanes that do not incorporate and never have incorporated Marburger winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

(2) For airplanes that incorporate or have incorporated Marburger winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712;

telephone: (562) 627–5228; facsimile: (562) 627–5210.

(n) AMOCs approved for AD 2001–10–04, AD 2001–10–04 R1, or AD 2002–11–05 for the AT–400 series airplanes are not considered approved for this AD.

(o) AMOCs approved for the repetitive inspection requirements of AD 2006–08–08 are approved for this AD until the scheduled modification date required by this AD. That AMOC was included in AD 2006–08–08 and can be found in the docket at: *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FAA-2006-23646.*

Material Incorporated by Reference

(p) You must use Snow Engineering Co. Drawing 21088, dated November 3, 2004; Snow Engineering Co. Process Specification 197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; and Snow Engineering Co. Service Letter 202, page 3, dated October 16, 2000, to do the actions required by this AD, unless the AD specifies otherwise.

(1) On April 21, 2006 (71 FR 19986, April 19, 2006) the Director of the Federal Register approved the incorporation by reference of Snow Engineering Co. Drawing 21088, dated November 3, 2004; Snow Engineering Co. Process Specification 197, page 1, revised June 4, 2002, pages 2 through 4, dated February 23, 2001, and page 5, dated May 3, 2002; and Snow Engineering Co. Service Letter 202, page 3, dated October 16, 2000, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612; Internet: *http://www.airtractor.com;* or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Appendix 1 to AD 2006–08–08 R1

The following provides procedures for determining the safe life for those Models AT–401, AT–401B, AT–402, AT–402A, and AT–402B airplanes that incorporate or have incorporated Marburger winglets. These winglets are installed following Supplemental Type Certificate (STC) No. SA00490LA.

What if I removed the Marburger winglets prior to further flight after April 21, 2006 (the effective date of AD 2006–08–08) or prior to April 21, 2006 (the effective date of AD 2006–08–08)?

1. Review your airplane's logbook to determine your airplane's time in service (TIS) with winglets installed per Marburger STC No. SA00490LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating Marburger STC No. SA00490LA. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (c)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–401B, SN 1022. From paragraph (c)(1) of this AD, the unmodified safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, SN 1022 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–401B, SN 1022. From paragraph (c)(4) of this AD, your winglet usage factor is 1.1.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours × a winglet usage factor of 1.1. The adjusted winglet TIS is 550 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example: Adjusted winglet TIS − the winglet TIS = winglet usage penalty. (550 hours) − (500 hours TIS) = (50 hours TIS).

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (c)(1) of this AD (result of Step 2 above.).

Example: Unmodified safe life − winglet usage penalty = adjusted safe life. (7,777 hours TIS) − (50 hours TIS) = (7,727 hours TIS).

7. If you remove the winglets from your airplane before further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (e)(1) of this AD and the airplane logbook.

What if I have the Marburger winglet installed as of April 21, 2006 (the effective date of AD 2006–08–08) and plan to operate my airplane without removing the winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example: A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–401B, SN 1022. From paragraph (c)(1) of this AD, the unmodified safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, SN 1022 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–401B, SN 1022. From paragraph (c)(4) of this AD, your winglet usage factor is 1.1.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example: Unmodified safe life − TIS without winglets = Potential winglet TIS. (7,777 hours TIS) − (1,000 hours TIS) = (6,777 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example: Potential winglet TIS ÷ Winglet usage factor = Adjusted potential winglet TIS. (6,777 hours TIS) ÷ (1.1) = (6,155 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example: Potential winglet TIS − Adjusted potential winglet TIS = Winglet usage penalty. (6,777 hours TIS) − (6,155 hoursTIS) = (622 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (c)(1) of this AD (the result of Step 2 above).

Example: Unmodified safe life − Winglet usage penalty = Adjusted safe life. (7,777 hours TIS) − (622 hours TIS) = (7,155 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (e)(1) of this AD and the airplane logbook.

What if I install or remove the Marburger winglet from my airplane in the future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Issued in Kansas City, Missouri, on March 24, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7068 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1081; Directorate Identifier 2008–NM–143–AD; Amendment 39–15864; AD 2009–07–05]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR72 Airplanes

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

ACTION: Final rule.

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

Incomplete accomplishment instructions in SB [service bulletin] ATR72–27–1059 original issue and Revision 1, failed to mention installation of cotter pins to secure the self locking nuts after re-installation of the modified Pitch Uncoupling Mechanism (PUM), when connecting the elevator control linkage rods to the PUM input levers and the PUM output rods to the elevator bellcranks (on both sides).

Because of the non-installation of these four cotter pins, the fail-safe criteria of the design requirements on the pitch control are no longer met. Such a failure could cause the loss of one self locking nut and would result in the loss of pitch control on one side—Captain or First Officer—or the loss of control of one elevator surface. The symmetrical loss of two concerned self-locking nuts could lead to a complete loss of the pitch control.

* * * * *

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

DATES: This AD becomes effective May 5, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 5, 2009.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 9, 2008 (73 FR 59573). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Incomplete accomplishment instructions in SB [service bulletin] ATR72–27–1059 original issue and Revision 1, failed to mention installation of cotter pins to secure the self locking nuts after re-installation of the modified Pitch Uncoupling Mechanism (PUM), when connecting the elevator control linkage rods to the PUM input levers and the PUM output rods to the elevator bellcranks (on both sides).

Because of the non-installation of these four cotter pins, the fail-safe criteria of the design requirements on the pitch control are no longer met. Such a failure could cause the loss of one self locking nut and would result in the loss of pitch control on one side—Captain or First Officer—or the loss of control of one elevator surface. The symmetrical loss of two concerned self-locking nuts could lead to a complete loss of the pitch control.

For the reasons stated above, this AD requires you to check [for] the presence of the four cotter pins and [perform] their installation if they are found to be missing.

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

Revision to Service Information

Since the NPRM was issued we have received Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 03, dated October 3, 2008. We referred to Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008, in the NPRM as the appropriate source of service information for accomplishing the required actions. Revision 03 of Avions de Transport Regional Service Bulletin ATR72–27–1059 adds an option for doing additional actions and includes minor editorial changes that do not affect the technical content. We have added Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 03, dated October 3, 2008, to paragraphs (f)(1), (f)(2), (f)(3), and (h) of this AD as an option for accomplishing the required actions.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 20 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,200, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–07–05 ATR–GIE Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–15864. Docket No. FAA–2008–1081; Directorate Identifier 2008–NM–143–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to ATR Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, all serial numbers, certificated in any category; as identified in paragraphs (c)(1) and (c)(2) of this AD, as applicable.

(1) This AD applies to airplanes on which Avions de Transport Regional Service Bulletin ATR72–27–1059 was done in service at original issue, dated October 3, 2006; or Revision 01, dated March 14, 2007; except as provided by paragraph (c)(2) of this AD.

(2) This AD does not apply to airplanes on which Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Revision 03, dated October 3, 2008; was done in service, or ATR Modification 05572 was done in production. Modification 05572 is factory-incorporated on ATR72–212A airplanes from manufacturer's serial number (MSN) 730.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

Incomplete accomplishment instructions in SB [service bulletin] ATR72–27–1059 original issue and Revision 1, failed to mention installation of cotter pins to secure the self locking nuts after re-installation of the modified Pitch Uncoupling Mechanism (PUM), when connecting the elevator control linkage rods to the PUM input levers and the PUM output rods to the elevator bellcranks (on both sides).

Because of the non-installation of these four cotter pins, the fail-safe criteria of the design requirements on the pitch control are no longer met. Such a failure could cause the loss of one self locking nut and would result in the loss of pitch control on one side—Captain or First Officer—or the loss of control of one elevator surface. The symmetrical loss of two concerned self-locking nuts could lead to a complete loss of the pitch control.

For the reasons stated above, this AD requires you to check [for] the presence of the four cotter pins and [perform] their installation if they are found to be missing.

Actions and Compliance

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

(1) Within 10 days after the effective date of this AD: Verify installation of the four cotter pins securing the nuts of the fastener assemblies connecting the elevator control rods to the elevator bellcranks as shown in Figure 1 of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Revision 03, dated October 3, 2008.

(2) If any cotter pin is found missing, before further flight, install a new cotter pin with part number MS24665–164 by doing all the applicable actions in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Revision 03, dated October 3, 2008.

Note 1: For accessing the zone to be inspected, panels 325BL, 325BR, 327HL, 327KL, 327KR, 327JR, 327JL, 333BB, and 334BB may need to be removed. Information pertaining to removal procedures can be found in the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Revision 03, dated October 3, 2008.

(3) Before further flight after accomplishment of paragraph (f)(2) of this AD, perform an operational test of the elevator control as specified in paragraph 3.D., ''Tests,'' of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Revision 03, dated October 3, 2008. If any elevator control rod fails the operational test, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The MCAI does not specify corrective action for failure of the operational test (binding or friction) specified in paragraph (f)(3) of this AD. This AD requires using a method approved by the Manager, International Branch, ANM–116; or the EASA (or its delegated agent) and performing corrective action before further flight.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Emergency Airworthiness Directive 2008–0137–E, dated July 23, 2008; and Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008, or Revision 03, dated October 3, 2008; for related information.

Material Incorporated by Reference

(i) You must use Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 02, dated May 19, 2008; or Avions de Transport Regional Service Bulletin ATR72–27–1059, Revision 03, dated October 3, 2008; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr*; Internet *http://www.aerochain.com*.

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

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

Issued in Renton, Washington, on March 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6755 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30659; Amdt. No. 3315]

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 March 31, 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 March 31, 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*.

Availability—All SIAPs are available online free of charge. Visit *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).

John M. Allen,

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:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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.

FDC date	State	City	Airport	FDC No.	Subject
02/20/09	SC	NEWBERRY	NEWBERRY COUNTY	9/6480	NDB RWY 22, AMDT 6
02/23/09	MD	FREDERICK	FREDERICK MUNI	9/6582	ILS OR LOC RWY 23, AMDT 5B
02/27/09	NY	BATAVIA	GENESEE COUNTY	9/7308	ILS OR LOC RWY 28, AMDT 6
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7641	NDB RWY 30, AMDT 1
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7642	RNAV (GPS) RWY 30, AMDT 1
03/03/09	ID	CALDWELL	CALDWELL INDUSTRIAL	9/7643	RNAV (GPS) RWY 12, AMDT 1
03/03/09	CA	MODESTO	MODESTO CITY–CO–HARRY SHAM FLD.	9/7694	ILS OR LOC/DME RWY 28R, AMDT 14
03/03/09	KS	WICHITA	BEECH FACTORY	9/7696	VOR/DME RNAV RWY 36, ORIG
03/03/09	KS	WICHITA	BEECH FACTORY	9/7697	VOR/DME RNAV RWY 18, ORIG

[FR Doc. E9–7039 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30658; Amdt. No 3314]

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 March 31, 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 March 31, 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.*

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 March 20, 2009.

John M. Allen,

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 07 MAY 2009

Fairbanks, AK, Fairbanks Intl, RNAV (GPS) RWY 2R, Orig
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) RWY 20L, Orig
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) X RWY 1L, Orig
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) X RWY 19R, Orig
Fairbanks, AK, Fairbanks Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Tanana, AK, Ralph M. Calhoun Memorial, Takeoff Minimums and Obstacle DP, Amdt 1
Long Beach, CA, Long Beach/Daugherty Field, RNAV (RNP) RWY 25R, Orig-A
Vacaville, CA, Nut Tree, Takeoff Minimums and Obstacle DP, Amdt 4
Vacaville, CA, Nut Tree, VOR/DME–A, Amdt 5
Akron, CO, Colorado Plains Regional, RNAV (GPS) RWY 11, Amdt 1
Akron, CO, Colorado Plains Regional, Takeoff Minimums and Obstacle DP, Orig
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, GPS RWY 15, Orig, CANCELLED
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, GPS RWY 33, Amdt 1, CANCELLED
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, ILS OR LOC RWY 33, Amdt 6
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, RNAV (GPS) RWY 15,Orig
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, RNAV (GPS) RWY 33, Orig
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, VOR/DME–A, Amdt 7
Montrose, CO, Montrose Rgnl, GPS RWY 13, Orig-B, CANCELLED
Montrose, CO, Montrose Rgnl, GPS RWY 17, Orig-A, CANCELLED
Montrose, CO, Montrose Rgnl, GPS RWY 35, Orig-B, CANCELLED
Montrose, CO, Montrose Rgnl, RNAV (GPS) RWY 13, Orig
Montrose, CO, Montrose Rgnl, RNAV (GPS) RWY 35, Orig
Montrose, CO, Montrose Rgnl, RNAV (GPS) Y RWY 17, Orig
Montrose, CO, Montrose Rgnl, RNAV (GPS) Z RWY 17, Orig
Montrose, CO, Montrose Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Montrose, CO, Montrose Rgnl, VOR/DME RWY 13, Amdt 9
Apalachicola, FL, Apalachicola Rgnl, RNAV (GPS)-A, Orig
Apalachicola, FL, Apalachicola Rgnl, RNAV (GPS)-B, Orig
Defuniak Springs, FL, Defuniak Springs, RNAV (GPS) RWY 9, Orig
Defuniak Springs, FL, Defuniak Springs, RNAV (GPS) RWY 27, Orig
Defuniak Springs, FL, Defuniak Springs, Takeoff Minimums and Obstacle DP, Orig
Cherokee, IA, Cherokee County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Mc Call, ID, Mc Call Muni, GPS RWY 34, Orig, CANCELLED
Mc Call, ID, Mc Call Muni, RNAV (GPS) RWY 34, Orig
Mc Call, ID, Mc Call Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Pocatello, ID, Pocatello Rgnl, RNAV (GPS) RWY 21, Amdt 1
Champaign/Urbana, IL, University of Illinois-Willard, ILS OR LOC RWY 32R, Amdt 12

Champaign/Urbana, IL, University of Illinois-Willard, NDB RWY 32R, Amdt 11
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 4, Orig
Champaign/Urbana, IL, University of Illinois-Willard, VOR RWY 4, Amdt 12
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 31C, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 13C, Amdt 1
Bloomington, IN, Monroe County, RNAV (GPS) RWY 17, Amdt 1
Bloomington, IN, Monroe County, RNAV (GPS) RWY 35, Amdt 1
Beloit, KS, Moritz Memorial, RNAV (GPS) RWY 17, Orig
Beloit, KS, Moritz Memorial, RNAV (GPS) RWY 35, Orig
Beloit, KS, Moritz Memorial, VOR/DME RWY 17, Amdt 4
Flemingsburg, KY, Fleming-Mason, GPS RWY 7, Orig, CANCELLED
Flemingsburg, KY, Fleming-Mason, GPS RWY 25, Orig, CANCELLED
Flemingsburg, KY, Fleming-Mason, RNAV (GPS) RWY 7, Orig
Flemingsburg, KY, Fleming-Mason, RNAV (GPS) RWY 25, Orig
Flemingsburg, KY, Fleming-Mason, VOR/DME–A, Amdt 6
Madisonville, KY, Madisonville Muni, RNAV (GPS) RWY 5, Orig
Madisonville, KY, Madisonville Muni, RNAV (GPS) RWY 23, Orig
Madisonville, KY, Madisonville Muni, VOR RWY 23, Amdt 14
Madisonville, KY, Madisonville Muni, VOR/DME RNAV RWY 23, Amdt 4, CANCELLED
Pikeville, KY, Pike County-Hatcher Field, Takeoff Minimums and Obstacle DP, Orig
De Ridder, LA, Beauregard Rgnl, LOC RWY 36, Amdt 3
De Ridder, LA, Beauregard Rgnl, NDB RWY 36, Amdt 5
De Ridder, LA, Beauregard Rgnl, RNAV (GPS) RWY 18, Orig
De Ridder, LA, Beauregard Rgnl, RNAV (GPS) RWY 36, Amdt 1
De Ridder, LA, Beauregard Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Reserve, LA, St John The Baptist Parish, GPS RWY 17, Orig-A, CANCELLED
Reserve, LA, St John The Baptist Parish, RNAV (GPS) RWY 17, Orig
Reserve, LA, St John The Baptist Parish, Takeoff Minimums and Obstacle DP, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, ILS OR LOC RWY 32, Amdt 7
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, RNAV (GPS) RWY 32, Amdt 1
Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 23, Amdt 10
Battle Creek, MI, W K Kellogg, GPS RWY 05, Orig-A, CANCELLED
Battle Creek, MI, W K Kellogg, RNAV (GPS) RWY 5, Orig
Battle Creek, MI, W K Kellogg, RNAV (GPS) RWY 23, Orig
Escanaba, MI, Delta County, RNAV (GPS) RWY 9, Orig
Escanaba, MI, Delta County, RNAV (GPS) RWY 27, Orig
Escanaba, MI, Delta County, Takeoff Minimums and Obstacle DP, Orig
Escanaba, MI, Delta County, VOR RWY 09, Amdt 14
Escanaba, MI, Delta County, VOR RWY 27, Amdt 12
Branson, MO, Branson, ILS OR LOC RWY 32, Orig
Branson, MO, Branson, RNAV (GPS) RWY 14, Orig
Branson, MO, Branson, RNAV (GPS) RWY 32, Orig
Branson, MO, Branson, Takeoff Minimums and Obstacle DP, Orig
Hannibal, MO, Hannibal Rgnl, NDB RWY 35, Amdt 4
Hannibal, MO, Hannibal Rgnl, RNAV (GPS) RWY 17, Orig
Hannibal, MO, Hannibal Rgnl, RNAV (GPS) RWY 35, Orig
Hannibal, MO, Hannibal Rgnl, VOR/DME–A, Amdt 4
Hannibal, MO, Hannibal Rgnl, Takeoff Minimums and Obstacle DP. Orig
Maryville, MO, Northwest Missouri Rgnl, NDB OR GPS RWY 14, Amdt 3, CANCELLED
Jackson, MS, Jackson-Evers Intl, RNAV (GPS) RWY 16L, Amdt 1
Jackson, MS, Jackson-Evers Intl, RNAV (GPS) RWY 16R, Amdt 1
Jackson, MS, Jackson-Evers Intl, RNAV (GPS) RWY 34L, Amdt 2
Jackson, MS, Jackson-Evers Intl, RNAV (GPS) RWY 34R, Amdt 1
Tupelo, MS, Tupelo Rgnl, GPS RWY 18, Orig, CANCELLED
Tupelo, MS, Tupelo Rgnl, GPS RWY 36, Orig, CANCELLED
Tupelo, MS, Tupelo Rgnl, ILS OR LOC RWY 36, Amdt 9
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 18, Orig
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 36, Orig
West Point, MS, Mc Charen Field, VOR–A, Amdt 4
West Point, MS, Mc Charen Field, VOR/DME–B, Amdt 5
Helena, MT, Helena Rgnl, RNAV (RNP) Y RWY 27, Orig
Helena, MT, Helena Rgnl, RNAV (RNP) Z RWY 9, Orig
Helena, MT, Helena Rgnl, RNAV (RNP) Z RWY 27, Orig
Ord, NE, Evelyn Sharp Field, GPS RWY 31, Orig, CANCELLED
Ord, NE, Evelyn Sharp Field, RNAV (GPS) RWY 13, Orig
Ord, NE, Evelyn Sharp Field, RNAV (GPS) Y RWY 31, Orig
Ord, NE, Evelyn Sharp Field, RNAV (GPS) Z RWY 31, Orig
Ord, NE, Evelyn Sharp Field, Takeoff Minimums and Obstacle DP, Amdt 3
Laconia, NH, Laconia Muni, Takeoff Minimums and Obstacle DP, Amdt 4
East Hampton, NY, East Hampton, RNAV (GPS) RWY 28, Orig
East Hampton, NY, East Hampton, RNAV (GPS) Y RWY 10, Orig
East Hampton, NY, East Hampton, RNAV (GPS) Z RWY 10, Orig
East Hampton, NY, East Hampton, VOR–A, Amdt 11
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 10, AMDT 6, CANCELLED
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 28, Amdt 3, CANCELLED
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 15, Orig
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 33, Orig
Astoria, OR, Astoria Regional, RNAV (GPS) RWY 26, Orig
Ebensburg, PA, Ebensburg, RNAV (GPS) RWY 7, Orig
Ebensburg, PA, Ebensburg, RNAV (GPS) RWY 25, Orig
Ebensburg, PA, Ebensburg, Takeoff Minimums and Obstacle DP, Amdt 2
Ebensburg, PA, Ebensburg, VOR–A, Amdt 7
Philadelphia, PA, Philadelphia Intl, ILS OR LOC/DME RWY 27R; ILS RWY 27R (CAT II), Amdt 10C
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27R, Amdt 1B
Tower City, PA, Bendigo, RNAV (GPS)–A, Orig
Pawtucket, RI, North Central State, GPS RWY 23, Orig-A, CANCELLED
Pawtucket, RI, North Central State, RNAV (GPS) RWY 23, Orig
Pawtucket, RI, North Central State, Takeoff Minimums and Obstacle DP, Amdt 3
Florence, SC, Florence Rgnl, GPS RWY 1, Orig, CANCELLED
Florence, SC, Florence Rgnl, GPS RWY 9, Orig, CANCELLED
Florence, SC, Florence Rgnl, GPS RWY 19, Orig, CANCELLED
Florence, SC, Florence Rgnl, GPS RWY 27, Orig, CANCELLED
Florence, SC, Florence Rgnl, ILS OR LOC RWY 9, Amdt 12
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 1, Orig
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 9, Orig
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 19, Orig
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 27, Orig
Winner, SD, Winner Rgnl, RNAV (GPS) RWY 13, Orig
Winner, SD, Winner Rgnl, RNAV (GPS) RWY 31, Orig
Winner, SD, Winner Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Winner, SD, Winner Rgnl, VOR–A, Amdt 7
Madisonville, TN, Monroe County, NDB RWY 5, Amdt 5, CANCELLED
Madisonville, TN, Monroe County, RNAV (GPS) RWY 5, Amdt 1
Madisonville, TN, Monroe County, RNAV (GPS) RWY 23, Amdt 1
Tullahoma, TN, Tullahoma Rgnl/Wm Northern Fld, SDF RWY 18, Amdt 5
Tullahoma, TN, Tullahoma Rgnl/Wm Northern Fld, Takeoff Minimums and Obstacle DP, Orig
Canadian, TX, Hemphill County, GPS RWY 4, Orig, CANCELLED
Canadian, TX, Hemphill County, GPS RWY 22, Orig-A, CANCELLED
Canadian, TX, Hemphill County, RNAV (GPS) RWY 4, Orig
Canadian, TX, Hemphill County, RNAV (GPS) RWY 22, Orig
Fort Worth, TX, Fort Worth Meacham Intl, GPS RWY 34, Orig-D, CANCELLED
Fort Worth, TX, Fort Worth Meacham Intl, RNAV (GPS) RWY 16, Amdt 1

Fort Worth, TX, Fort Worth Meacham Intl, RNAV (GPS) RWY 34, Orig
Houston, TX, Houston Executive, RNAV (GPS) RWY 36, Amdt 1
Wink, TX, Winkler County, RNAV (GPS) RWY 13, Orig
Wink, TX, Winkler County, RNAV (GPS) RWY 31, Orig
Wink, TX, Winkler County, Takeoff Minimums and Obstacle DP, Orig
Wink, TX, Winkler County, VOR RWY 13, Amdt 10
Blacksburg, VA, Virginia Tech/Montgomery Executive, NDB–A, Amdt 4
Blacksburg, VA, Virginia Tech/Montgomery Executive, RNAV (GPS) RWY 12, Amdt 1
Blacksburg, VA, Virginia Tech/Montgomery Executive, RNAV (GPS) RWY 30, Orig
Ephrata, WA, Ephrata Muni, RNAV (GPS) RWY 3, Orig
Ephrata, WA, Ephrata Muni, RNAV (GPS) RWY 21, Orig
Ephrata, WA, Ephrata Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Ephrata, WA, Ephrata Muni, VOR RWY 21, Amdt 19
Ephrata, WA, Ephrata Muni, VOR/DME RWY 3, Amdt 4
Snohomish, WA, Harvey Field, RNAV (GPS)-A, Orig
Snohomish, WA, Harvey Field, Takeoff Minimums and Obstacle DP, Orig
Middleton, WI, Middleton Muni-Morey Field, LOC/DME RWY 10, Amdt 1
Middleton, WI, Middleton Muni-Morey Field, RNAV (GPS) RWY 10, Amdt 1
Middleton, WI, Middleton Muni-Morey Field, RNAV (GPS) RWY 28, Amdt 2
Monroe, WI, Monroe Muni, RNAV (GPS) RWY 12, Orig
Monroe, WI, Monroe Muni, RNAV (GPS) RWY 30, Orig
Monroe, WI, Monroe Muni, VOR/DME RWY 30, Amdt 8
Monroe, WI, Monroe Muni, VOR/DME RNAV OR GPS RWY 12, Amdt 4A, CANCELLED
Waukesha, WI, Waukesha County, NDB OR GPS RWY 28, Amdt 3B, CANCELLED
Waukesha, WI, Waukesha County, RNAV (GPS) RWY 10, Orig
Waukesha, WI, Waukesha County, RNAV (GPS) RWY 28, Orig
Waukesha, WI, Waukesha County, Takeoff Minimums and Obstacle DP, Amdt 6
Waukesha, WI, Waukesha County, VOR–A, Amdt 16
Martinsburg, WV, Eastern WV Regional/Shepherd, ILS OR LOC RWY 26, Amdt 7

On March 11, 2009 (74 FR 10471) and March 17, 2009 (74 FR 11468) the FAA published several amendments in Docket No. 30654, Amdt No. 3310 and Docket No. 30657, Amdt No. 3313 to Part 97 of the Federal Aviation Regulations under sections 97.23 and 97.29. The following entries are hereby rescinded in their entirety:

Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 3, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 21, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 3, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 21, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Regional, VOR RWY 21, Amdt 17

[FR Doc. E9–7067 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. FDA–2009–N–0141]

Medical Devices; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a medical device regulation to correct a statutory reference to reflect the current citation and to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective March 31, 2009.

SUPPLEMENTARY INFORMATION: FDA is amending its regulation at 21 CFR 814.20 to correct a statutory reference to reflect the current citation. FDA is revising § 814.20(f) by replacing section ''706'' with section ''721.'' Publication of this document constitutes final action on the change under the Administrative Procedure Act (5 U.S.C. 553). This technical amendment merely updates and corrects a statutory reference in the Code of Federal Regulations (CFR) that is no longer current. FDA therefore, for good cause, has determined that notice and public comment are unnecessary, under 5 U.S.C. 553(b)(3)(B). Further, this rule places no burden on affected parties for which such parties would need a reasonable time to prepare for the effective date of the rule. Accordingly, FDA, for good cause, has determined this technical amendment to be exempt under 5 U.S.C. 553(d)(3) from the 30 day effective date from publication.

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office Management and Budget under the Paperwork Reduction Act of 1995 is not required.

For the effective date of this final rule, see the **DATES** section of this document.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 814 is amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 2. In § 814.20, paragraph (f) is revised to read as follows:

§ 814.20 Application.

* * * * *

(f) If a color additive subject to section 721 of the act is used in or on the device and has not previously been listed for such use, then, in lieu of submitting a color additive petition under part 71, at the option of the applicant, the information required to be submitted under part 71 may be submitted as part of the PMA. When submitted as part of the PMA, the information shall be submitted in three copies each bound in one or more numbered volumes of reasonable size. A PMA for a device that contains a color additive that is subject to section 721 of the act will not be approved until the color additive is listed for use in or on the device.

* * * * *

Dated: March 24, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–7073 Filed 3–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes; Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.908 to 1.1000), revised as of April 1, 2008, in § 1.924(c)–1, make the following corrections:

1. On pages 62 and 63, remove paragraphs (d) introductory text, (d)(1) through (7), and (2) following (d)(7);

2. Reinstate paragraphs (d)(1) and (2) to read as set forth below; and

3. On page 64, in the last sentence of paragraph (d)(6), insert the word ''in'' before the words ''§ 1.415(c)–2(b) and (c)''.

§ 1.924(c)–1 Requirement that a FSC be managed outside the United States.

* * * * *

(d) *Disbursement of dividends, legal and accounting fees, and salaries of officers and directors out of the principal bank account of the FSC*—(1) *In general.* All dividends, legal fees, accounting fees, salaries of officers of the FSC, and salaries or fees paid to members of the board of directors of the FSC that are disbursed during the taxable year must be disbursed out of bank account(s) of the FSC maintained outside the United States. Such an account is treated as the principal bank account of the FSC for purposes of section 924(c). Dividends, however, may be netted against amounts owed to the FSC (e.g., commissions) by a related supplier through book entries. If the FSC regularly disburses its legal or accounting fees, salaries of officers, and salaries or fees of directors out of its principal bank account, the occasional, inadvertent payment by mistake of fact or law of such amounts out of another bank account will not be considered a disbursement by the FSC if, upon determination that such payment was made from another account, reimbursement to such other account is made from the principal bank account of the FSC within a reasonable period from the date of the determination. Disbursement out of the principal bank account of the FSC may be made by transferring funds from the principal bank account to a U.S. account of the FSC provided that (i) the payment of the dividends, salaries or fees to the recipients is made within 12 months of the transfer, (ii) the purpose of the expenditures is designated and, (iii) the payment of the dividends, salaries or fees is actually made out of the same U.S. account that received the disbursement from the principal bank account.

(2) *Reimbursement.* Legal or accounting fees, salaries of officers, and salaries or fees of directors that are paid by a related person wholly or partially on behalf of a FSC must be reimbursed by the FSC. The amounts paid by the related person are not considered disbursed by the FSC until the related person is reimbursed by the FSC. The related person must be reimbursed no later than the last date prescribed for filing the FSC's tax return (including extensions) for the taxable year to which the reimbursement relates. Any reimbursement for amounts paid on behalf of the FSC must be disbursed out of the FSC's principal bank account (and not netted against any obligation owed by the related person to the FSC), as set forth in paragraph (c) of this section. To determine the amounts paid on behalf of the FSC, the FSC may rely upon a written statement or invoice furnished to it by the related person which shows the following:

(i) The actual fees charged for performing the legal or accounting services for the FSC or, if such fees cannot be ascertained by the related person, a good faith estimate thereof, and the actual salaries or fees paid for services as officers and directors of the FSC, and

(ii) The person who performed or provided the services.

* * * * *

[FR Doc. E9–7205 Filed 3–30–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes; Transfers of Property by U.S. Persons to Foreign Corporations

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.301 to 1.400), revised as of April 1, 2008, on page 306, in § 1.367(a)–6T, in paragraph (e)(5)(ii)(B), reinstate the remainder of the first sentence, following the word ''some'', to read as follows: ''. . . portion of which was recaptured on the disposition, of the recaptured portions of those overall foreign losses after multiplication by the following fraction:''.

[FR Doc. E9–7203 Filed 3–30–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, 46, and 71

[Docket No. TTB–2009–0001; T.D. TTB–75; Re: Notice No. 93]

RIN 1513–AB70

Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits (2009R–118P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary Rule.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is amending its regulations to implement certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (the Act). This final rule amends existing regulations to reflect increases in the Federal excise tax rates on tobacco products and cigarette papers and tubes, revises existing floor stocks tax regulations to reflect the scope of the floor stocks tax provisions of the Act, and revises existing regulations to include the new statutory criteria for denial, suspension, or revocation of tobacco permits. We also are soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: *Effective date:* March 31, 2009. *Applicability dates:* The amendments in 27 CFR 40.21, 40.23, 40.25, 40.25a, 40.351, 40.352, 41.30 through 41.35, 46.75, and 46.191 through 46.274, are applicable April 1, 2009. The amendments in 27 CFR 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.46b were applicable on February 4, 2009.

FOR FURTHER INFORMATION CONTACT: For questions concerning floor stocks tax, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (*FloorStocksTax@ttb.gov*, 513–684–3334 or 1–877–TTB–FAQS (1–877–882–3277)); for other questions concerning this document, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8210).

SUPPLEMENTARY INFORMATION:

Impact of the Homeland Security Act on This Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. The regulation and taxation of tobacco products and cigarette papers and tubes remains a function of the Department of the Treasury and is the responsibility of TTB. References to ATF in this document reflect the time period prior to January 24, 2003, while references to TTB are after that date.

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) contains permit, Federal excise tax payment, and related provisions regarding tobacco products and cigarette papers and tubes. TTB has authority to issue, deny, suspend, and revoke permits of manufacturers, importers, and export warehouse proprietors pursuant to regulations contained in parts 40, 41, 44, and 71 of title 27 of the Code of Federal Regulations (CFR). TTB also collects Federal excise taxes on tobacco products and cigarette papers and tubes from proprietors of domestic bonded manufacturing premises pursuant to regulations contained in 27 CFR part 40; the Bureau of Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. TTB also has authority to regulate the importation and exportation of tobacco products and cigarette papers and tubes, and the removal of tobacco products and cigarette papers and tubes for use of the United States under 27 CFR parts 41, 44 and 45, respectively. Under 27 CFR part 46, TTB has authority to administer floor stocks taxes and other miscellaneous matters involving these products.

Tax Increase

The Children's Health Insurance Program Reauthorization Act of 2009 (the Act), Public Law 111–3, was enacted on February 4, 2009. Section 701 of the Act increases the rate of Federal excise tax on tobacco products and cigarette papers and tubes removed from the factory or from internal revenue bond or from Customs custody on or after April 1, 2009.

This document amends the tobacco regulations in parts 40, 41, 44, and 46 to reflect the new excise tax rates. These amendments include additional examples of computations that show the new tax rates.

Floor Stocks Tax

Section 701 of the Act also imposes a floor stocks tax on taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), and on cigarette papers and tubes, held for sale on April 1, 2009. The floor stocks tax rate is equal to the difference between the new Federal excise tax rate and the immediately prior rate. Persons likely to be holding articles for sale that are subject to the floor stocks tax include manufacturers, importers, and wholesale and retail dealers of these articles. The floor stocks tax provisions of section 701 also permit a credit against the floor stocks tax of $500 or the amount of tax due, whichever is less, and also contain rules for handling articles in foreign trade zones and for controlled groups.

The floor stocks tax regulations currently in 27 CFR part 46, subpart I, were promulgated by ATF to administer the 2000 and 2002 cigarette floor stocks taxes imposed by section 9302(j) of Public Law 105–33. There is no need to retain those regulations (any collection or other administrative action relating to those taxes would be conducted under the provisions of the law and regulations in effect at the time). Accordingly, in this document, TTB revises subpart I of part 46 to implement the new floor stocks tax imposed by the Act, relying on and replicating the prior provisions to the greatest extent possible. However, TTB notes that there are some differences between the law that imposed the earlier floor stocks tax and the 2009 floor stocks tax imposed by the Act, which are addressed in the new regulations adopted in this document as follows:

- The 2009 floor stocks tax applies to more articles (that is, not only to cigarettes), so the instructions for taking inventories and computing appropriate tax are modified accordingly.
- For purposes of the previous floor stocks tax regime, ATF included instructions for keeping separate inventories of cigarettes marked for export. Since holding products marked for export is prohibited by 26 U.S.C. 5751, inventory instructions for such products are not necessary.
- The Act provides no exemption for products held in vending machines, so no such exemption is provided in this circumstance.
- Under the previous floor stocks tax, ATF regulations provided that a person holding articles subject to floor stocks tax who owed no tax after taking the allowed credit, would not have to file a return. However, based on experience under that previous floor stocks tax, TTB believes that it is necessary to require the filing of a return even when no tax is due. If TTB were to provide an exemption from filing a return when no tax is due, TTB would not be able to determine if the failure to file a return is due to zero liability or willful noncompliance with the requirements of the statute, so no exemption is provided for in the regulatory texts adopted in this document. Therefore, those whose tax owed is zero must file a return.

Section 702(d) of the Act expanded the definition of ''roll-your-own'' tobacco to include tobacco for making cigars and tobacco for use as wrappers for cigars, effective April 1, 2009. The floor stocks tax, however, applies only to ''roll-your-own'' products covered by the old definition (that is, ''any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes''). Therefore, in order to avoid confusion in the implementation of the floor stocks tax, that definition change will be reflected in a separate rulemaking.

Denial, Suspension and Revocation of Permits

Section 702(b) of the Act amended 26 U.S.C. 5712 and 5713 to expand the basis for denial, suspension and revocation of tobacco permits with effect from February 4, 2009. In this document, TTB includes the amended statutory language in the pertinent sections of the TTB regulations, that is, in §§ 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.49b.

Temporary Rule

Based on the February 4, 2009, enactment of the changes to the criteria for denial, suspension, and revocation of permits and the April 1, 2009, effective date of the tax increases and floor stocks tax, TTB believes that proper administration and enforcement of those requirements necessitates the immediate adoption of implementing regulations as a temporary rule. TTB believes that such implementing action ensures that affected industry members will have timely knowledge of the regulatory requirements.

Public Participation

For submitting comments, please refer to the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

Regulatory Flexibility Act

We certify that this temporary rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The regulatory obligations and relevant collections of information derive directly from the Internal Revenue Code of 1986, as amended, and the regulations in this rule concerning these obligations and collections merely implement and provide necessary standards for complying with the statutory requirements. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Paperwork Reduction Act

TTB has provided estimates of the burden that the collection of information contained in these regulations imposes, and the estimated burden has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0129 and 1513–0030.

Under the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Comments concerning suggestions for reducing the burden of the collections of information in this document should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Executive Order 12866

This is not a significant regulatory action as defined in E.O. 12866. Therefore, it requires no regulatory assessment.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Because this document implements provisions of a law which are effective on February 4 and on April 1, 2009, and because immediate guidance is necessary to implement these provisions, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b).

Pursuant to the provisions of 5 U.S.C. 553(d)(2), and (d)(3), we are issuing these regulations without a delayed effective date. TTB has determined that this regulation is an interpretative rule that implements Public Law 111–3 as provided for in section 553(d)(2). TTB also has determined that good cause exists to provide industry members with immediate guidance on procedures to conduct an inventory and pay the appropriate floor stocks tax in accordance with section 553(d)(3).

Drafting Information

Marjorie D. Ruhf of the Regulations and Rulings Division drafted this document. Other employees of the Alcohol and Tobacco Tax and Trade Bureau participated in its development.

List of Subjects

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 46

Administrative practice and procedure, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 71

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Amendments to the Regulations

■ For the reasons set forth in the preamble, chapter I of title 27 of the Code of Federal Regulations is amended as follows:

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 1. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Paragraph (a) of § 40.21 is revised to read as follows:

§ 40.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigars per thousand	$1.828	$50.33
Large cigars*		
• percentage of sale price	20.719%	52.750%
• but not to exceed—	$48.75 per thousand	$0.4026 per cigar.

*For large cigars: Until March 31, 2009, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294 per thousand. On and after April 1, 2009, the percentage tax rate applies when the sale price is $763.222 or less per thousand cigars, and the flat tax rate applies when the sale price is more than $763.222 per thousand cigars.

* * * * *

■ 3. Section 40.23 is revised to read as follows:

§ 40.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	$19.50	$50.33
Large cigarettes up to 6½″ long	$40.95	$105.69
Large cigarettes over 6½″ long	Taxed at the rate for small cigarettes, counting each 2¾″ or fraction thereof of the length of each as one cigarette.	

■ 4. Section 40.25 is revised to read as follows:

§ 40.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff	$ 0.585	$ 1.51
Chewing tobacco	$ 0.195	$ 0.5033

* Prorate tax for fractions of a pound.

■ 5. Section 40.25a is revised to read as follows:

§ 40.25a Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco	$ 1.0969	$ 2.8311
Roll-your-own tobacco	$ 1.0969	$ 24.78

* Prorate tax for fractions of a pound.

■ 6. Section 40.74 is revised to read as follows:

§ 40.74 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer may cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is eligible for a permit. Any of the following conditions may be grounds for denial of a permit:

(1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(2) The activity proposed to be carried out at such premises does not meet the minimum manufacturing or activity requirements of § 40.61(b); or

(3) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(i) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(ii) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(iii) Has failed to disclose any material information required or made any material false statement in the application therefor.

(b) *TTB action.* The appropriate TTB officer, if there is reason to believe that the applicant is not entitled to a permit, shall promptly give the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(26 U.S.C. 5712)

■ 7. Section 40.183 is amended by revising paragraph (e) to read as follows:

§ 40.183 Record of tobacco products.

* * * * *

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 40.22, except that before April 1, 2009, cigars that cost more than $235.294 may optionally be shown as if the price were $236 per thousand, and on and after April 1, 2009, cigars that cost more than $763.222 may optionally be shown as if the price were $764 per thousand);

* * * * *

■ 8. Section 40.184 is amended by revising paragraph (a)(4) to read as follows:

§ 40.184 Record of removals subject to tax.

(a) * * *

(4) For large cigars, show the sale price (if the sale price is more than $235.294 per thousand before April 1, 2009, or more than $763.222 per thousand on and after April 1, 2009, you may place a note to that effect in the record instead of the actual price).

* * * * *

■ 9. Section 40.332 is revised to read as follows:

§ 40.332 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

■ 10. Section 40.351 is revised to read as follows:

§ 40.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½″ long	$ 0.0122	$ 0.0315
Cigarette papers over 6½″ long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.	

* Tax rate for less than 50 papers is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

■ 11. Section 40.352 is revised to read as follows:

§ 40.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette tubes up to 6½" long	$ 0.0244	$ 0.0630
Cigarette tubes over 6½" long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.	

* Tax rate for less than 50 tubes is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 12. The authority citation for part 41 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 13. Section 41.30 is revised to read as follows:

§ 41.30 Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco	$ 1.0969	$ 2.8311
Roll-your-own tobacco	$ 1.0969	$ 24.78

* Prorate tax for fractions of a pound.

■ 14. Paragraph (a) of § 41.31 is revised to read as follows:

§ 41.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigars per thousand	$1.828	$50.33
Large cigars*		
• percentage of sale price	20.719%	52.750%
• but not to exceed—	$48.75 per thousand	$0.4026 per cigar.

*For large cigars: Until March 31, 2009, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294 per thousand. On and after April 1, 2009, the percentage tax rate applies when the sale price is $763.222 or less per thousand cigars, and the flat tax rate applies when the sale price is more than $763.222 per thousand cigars.

* * * * *

■ 15. Section 41.32 is revised to read as follows:

§ 41.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	$19.50	$50.33
Large cigarettes up to 6½″ long	$40.95	$105.69
Large cigarettes over 6½″ long	Taxed at the rate for small cigarettes, counting each 2¾ or fraction thereof of the length of each as one cigarette.	

■ 16. Section 41.33 is revised to read as follows:

§ 41.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff	$0.585	$1.51
Chewing tobacco	$0.195	$0.5033

*Prorate tax for fractions of a pound.

■ 17. Section 41.34 is revised to read as follows:

§ 41.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½ long	$0.0122	$0.0315
Cigarette papers over 6½″ long	Use rates above, but count each 2¾″ or fraction thereof of the length of each as one cigarette paper.	

*Tax rate for less than 50 papers is the same. The tax is not prorated.

■ 18. Section 41.35 is revised to read as follows:

§ 41.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½ long	$0.0244	$ 0.0630

Product	Tax rate for each 50 tubes* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers over 6½ long	Use rates above, but count each 2¾ or fraction thereof of the length of each as one cigarette tube.	

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

■ 19. Section 41.81 is amended by revising paragraphs (c)(4)(ii) and (c)(4)(iii) to read as follows:

§ 41.81 Taxpayment.

* * * * *

(c) * * *

(4) * * *

(ii) For large cigars with a sale price of not more than $235.294 per thousand before April 1, 2009, or a sale price of not more than $763.222 per thousand on and after April 1, 2009, the number and total sale price of such cigars;

(iii) For large cigars with a sale price of more than $235.294 per thousand before April 1, 2009, or a sale price equal to or more than $763.222 per thousand on and after April 1, 2009, the number of cigars;

* * * * *

■ 20. Section 41.106 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 41.106 Record of shipment by taxpayer.

(a) * * *

(5) The number and total sale price of large cigars having a sale price of not more than $235.294 per thousand before April 1, 2009, or a sale price of not more than $763.222 per thousand on and after April 1, 2009, to be shipped;

(6) The number of large cigars having a sale price equal to or more than $235.294 per thousand before April 1, 2009, or a sale price equal to or more than $763.222 per thousand on and after April 1, 2009, to be shipped;

* * * * *

■ 21. Section 41.110 is amended by revising paragraphs (e) and (f) to read as follows:

§ 41.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.

* * * * *

(e) The number and total sale price of large cigars having a sale price of not more than $235.294 per thousand before April 1, 2009, or a sale price of not more than $763.222 per thousand on and after April 1, 2009, to be shipped;

(f) The number of large cigars having a sale price equal to or more than $235.294 per thousand before April 1, 2009, or a sale price equal to or more than $763.222 per thousand on and after April 1, 2009, to be shipped;

* * * * *

■ 22. Section 41.198 is revised to read as follows:

§ 41.198 Investigation of applicant.

Appropriate TTB officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is eligible for a permit. A permit may be denied if the applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(a) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(b) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(c) Has failed to disclose any material information required or made any material false statement in the application therefor.

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 23. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703, 5704, 5708, 5711–13, 5721–5723, 5731, 5741, 5751, 5754, 6066, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 24. Section 44.92 is revised to read as follows:

§ 44.92 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer shall promptly cause such inquiry or investigation to be made, as may be necessary, to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is eligible for a permit. Any of the following conditions may be grounds for denial of a permit:

(1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue; or

(2) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(A) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(B) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(C) Has failed to disclose any material information required or made any material false statement in the application therefor.

(b) *TTB action.* An appropriate TTB officer who has reason to believe that the applicant is not entitled to a permit shall promptly give the applicant notice of the contemplated disapproval of his application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is made applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(72 Stat. 1421; 26 U.S.C. 5712)

■ 25. Section 44.162 is revised to read as follows:

§ 44.162 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that an export warehouse proprietor has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations

thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such export warehouse proprietor to show cause why the permit should not be suspended or revoked after hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to appeals) is made applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why the permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

(72 Stat. 1421; 26 U.S.C. 5713)

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 26. The authority citation for Part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

■ 27. Section 46.75 is amended by removing the tables titled ''Example using 1993–1999 Rates'' and ''Example using 2000–2001 Rates'' and by adding a new example at the end:

§ 46.75 Required information for claims.

* * * * *

EXAMPLE USING RATES FOR APRIL 1, 2009 AND AFTER

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$50.33 per thousand	$1,006.60
1,000	Large cigars—sale price $100/thousand	52.75% of sale price	52.75
500	Large cigars—sale price $0.77 per cigar	$0.4026 per cigar	201.30
10,000	Small cigarettes	$50.33 per thousand	503.30
5,000	Large cigarettes	$105.69 per thousand	528.45
199,975	Cigarette papers	$0.0315 per 50 papers	126.00
1,000	Cigarette tubes	$0.0630 per 50 tubes	1.26
100 lbs	Chewing tobacco	$0.5033 per pound	50.33
200 lbs	Snuff	$1.51 per pound	302.00
100 lbs	Pipe tobacco	$2.8311 per pound	283.11
300 lbs	Roll-your-own tobacco	$24.78 per pound	7,434.00
Total claimed			10,489.10

■ 28. Subpart I is revised to read as follows:

Subpart I—Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

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Subpart I—Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

Authority: Section 701, Pub. L. 111–3, unless otherwise noted.

General

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on certain tobacco products, cigarette papers, and cigarette tubes held for sale on April 1, 2009.

§ 46.192 Definitions used in this subpart.

As used in this subpart, the following terms have the meanings indicated unless the context in which they are used requires a different meaning or a different definition is prescribed for a

particular section or portion of this subpart.

(a) *Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

(b) *Articles subject to floor stocks tax.* All Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes that are held for sale on April 1, 2009.

(c) *Cigarette paper.* Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(d) *Cigarette tube.* Cigarette paper made into a hollow cylinder for use in making cigarettes.

(e) *Controlled group.* A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations.* The term ''controlled group of corporations'' has the meaning given to that term by 26 U.S.C. 1563(a) and the implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each time it appears. Controlled groups of corporations include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1T(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563–1T(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563–1T(a)(4).

(2) *Nonincorporated dealers under common control.* A group of dealers is considered to be a controlled group when the group would qualify as a controlled group of corporations, except for the fact that one or more of the dealers is not incorporated.

(f) *Dealer.* A person or other entity holding articles subject to floor stocks tax for sale on April 1, 2009, including manufacturers, importers, wholesalers, and retailers.

(g) *Floor stocks tax.* A tax imposed on all Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes held for sale on April 1, 2009. The floor stocks tax is the difference between the previous excise tax rate and the new excise tax rate.

(h) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(i) *Person.* An individual, trust, estate, partnership, association, company, or corporation, any State, including the District of Columbia, or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(j) *Tobacco products.* Cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco as described in 26 U.S.C. 5702(a), (b), (m)(2), (m)(3), (n) and (o), respectively.

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory.* The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax.* The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax.* After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records.* The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

(Approved by the Office of Management and Budget under control number 1513–0129)

Inventories

§ 46.201 General.

(a) *Date.* The dealer must take an inventory to establish the quantities of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer must take the physical inventory or record (book) inventory not earlier than March 26, 2009 and not later than April 10, 2009.

(b) *Reconciliation.* If the dealer takes a physical inventory on any day other than April 1, 2009, the resulting records must be reconciled to reflect the actual quantity of articles held at 12:01 a.m. on April 1, 2009. These records must include all supporting records of receipt and disposition.

(c) *Method.* The dealer may take a physical inventory in accordance with § 46.202 or a record (book) inventory in accordance with § 46.203. The following table lists the taxable articles and the method to use for each to determine quantities:

Article	Inventory method
Small cigarettes	Count the number of cigarettes.
Large cigarettes 6½″ or less in length	Count the number of large cigarettes.
Large cigarettes more than 6½″ in length	Keep a separate count for each size of large cigarette. Count each 2¾″, or fraction thereof, as one small cigarette.
Small Cigars	Count the number of small cigars.
Snuff	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Chewing tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Pipe tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Roll-your-own tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6½″ or less in length	Count the number of cigarette papers, divide by 50, and round up if there is any remainder.

Article	Inventory method
Cigarette papers more than 6½″ in length	Count the number for each size of cigarette paper. Count each 2¾″, or fraction thereof, as new cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6½″ or less in length	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.
Cigarette tubes more than 6½″ in length	Count the number for each size of cigarette tube. Count each 2¾″, or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

§ 46.202 Physical inventory requirements.

The dealer's physical inventory must result in a written record of:

(a) The quantity and type of each article subject to floor stocks tax recorded in sufficient detail to determine the tax rate as stated in § 46.222. See the table in § 46.201(c) for the information required for each type of article;

(b) The date and time the inventory was taken;

(c) The name of the individual(s) conducting the inventory and the name of the dealer for whom the inventory was taken; and

(d) The location where the inventory was taken (street address, city and State).

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.203 Record (book) inventory requirements.

(a) The dealer may use a record (book) inventory if the dealer has source records that show:

(1) The quantities of receipts and dispositions of all articles subject to floor stocks tax;

(2) The types and quantities of articles actually on hand as if a physical inventory had taken place on April 1, 2009. See the table in § 46.201(c) for the information required for each type of article;

(3) The name and address of the consignor and consignee. For over the counter sales by retail dealers, the consignee name and address is not required;

(4) The date of receipt or disposition of the articles; and

(5) The brand name of each product.

(b) If the dealer does not take the inventory as of the close of business on the last business day before April 1, 2009, the records must be reconciled as provided in § 46.201(b).

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.204 Articles in transit.

The dealer must include articles subject to floor stocks tax that are in transit in the inventory if the dealer holds title to those articles. If the dealer has transferred title to the article, the dealer must document the title transfer in writing. For example, the dealer may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.205 Guidelines to determine title to articles in transit.

The dealer may use the following guidelines to establish who holds title to articles in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the articles.

(1) If the shipment is free on board (F.O.B.) destination, the title transfer occurs when the seller completes the physical delivery of the articles.

(2) If the shipment is free on board (F.O.B.) shipping point, the title transfer occurs at the time and place of shipment, which is generally by common carrier.

§ 46.206 Articles in a foreign trade zone.

If articles subject to floor stocks tax are stored in a foreign trade zone established under the Foreign Trade Zone Act (the Act of June 18, 1934, 48 Stat. 998, 19 U.S.C. 81a *et seq.*), the dealer is liable for the tax and must take an inventory in accordance with § 46.207 or when either of the following conditions apply:

(a) Internal revenue taxes have been determined or customs duties liquidated, with respect to the articles pursuant to the first proviso of section 3(a) of the Foreign Trade Zone Act; or

(b) Articles are held by a customs officer pursuant to the second proviso of section 3(a) of the Foreign Trade Zone Act.

§ 46.207 Articles held in bond.

If the dealer is a manufacturer or an export warehouse proprietor and holds articles in TTB bond on April 1, 2009, the floor stocks tax does not apply to those articles. Likewise, if the dealer holds articles in a customs bonded warehouse on which tax has not been paid or determined, the floor stocks tax does not apply on those articles. However, if the dealer on April 1, 2009, holds articles in a customs bonded warehouse or foreign trade zone on which tax has been paid or determined pursuant to 26 U.S.C. 5703(b)(2)(B), the floor stocks tax applies to those articles.

§ 46.208 Unmerchantable articles.

Articles that the dealer holds for return to a supplier because of some defect are not subject to the floor stocks tax. However, the dealer must segregate any such unmerchantable articles and include them in a separate section of the inventory record. The dealer cannot include as unmerchantable any items that may be held because of poor market demand or to reduce the dealer's inventory. If, for any reason, the tobacco products or cigarette papers or tubes that were determined to be unmerchantable are not subsequently returned or destroyed, the dealer must file an additional floor stocks tax return and pay tax on such products plus any applicable penalties and interest.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.209 Articles in vending machines.

There is no exemption for articles in vending machines. They are subject to the floor stocks tax and must be included in the dealer's inventory record.

§ 46.210 Articles marked ''not for sale'' or ''complimentary''.

Articles marked ''not for sale'' or ''complimentary'' that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the physical or record (book) inventory as provided in §§ 46.202 or § 46.203.

Tax Liability Calculation

§ 46.221 Floor stocks tax rates.

Product	Floor stocks tax rate
Small cigars	$48.502 per thousand.
Small cigarettes	30.83 per thousand.
Large cigarettes 6¾ inch or less in length	64.74 per thousand.
Large cigarettes more than 6¾ inch in length	30.83 per thousand units of length.
Snuff	0.925 per pound.
Chewing tobacco	0.3083 per pound.
Pipe tobacco	1.7342 per pound.
Roll-your-own	23.6831 per pound.
Cigarette papers	0.0193 per 50 papers or fraction thereof
Cigarette tubes	0.0386 per 50 tubes or fraction thereof.

§ 46.222 Determination of amount of tax due.

After the dealer has taken the inventory, the dealer must convert the inventory quantities to taxable units using the table below. For tobacco products, round the quantities to two decimal places. The dealer must then apply the applicable tax rate for each type of taxable article using the table in § 46.221 to determine the amount of tax due.

Product	Computation
Small cigars weighing not more than 3 pounds thousand	Divide number of cigars by 1,000 and multiply by the small cigar tax rate.
Small cigarettes weighing not more than 3 pounds thousand	Divide number of cigarettes by 1,000 and multiply by the small cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring 6½″ or less in length.	Divide number of cigarettes by 1,000 and multiply by the large cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring more than 6½″ in length.	Mathematically adjust the number of large cigarettes using the instructions below.* Divide the adjusted number of large cigarettes by 1,000 and multiply by the small cigarette tax rate.
Snuff	Multiply the total in pounds by the snuff tax rate.
Chewing tobacco	Multiply the total in pounds by the chewing tobacco tax rate.
Pipe tobacco	Multiply the total in pounds by the pipe tobacco tax rate.
Roll-your-own	Multiply the total in pounds by the roll-your-own tax rate.
Cigarette papers 6½″ or less in length	Divide the number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.
Cigarette papers more than 6½″ in length	Mathematically adjust the number of cigarette papers using the instructions below.* Divide the adjusted number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.
Cigarette tubes 6½″ or less in length	Divide the number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.
Cigarette tubes more than 6½″ in length	Mathematically adjust the number of cigarette tubes using the instructions below.* Divide the adjusted number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.

*Large cigarettes, cigarette papers, and cigarette tubes more than 6½ inch in length are counted as multiple units. Each 2¾ inch or fraction of the length is counted as a separate taxable unit. For each different length of product in this category, divide the length by 2¾ inch and add 1 to the result if there is a remainder. Multiply the number of cigarettes, cigarette papers, or tubes of that length by the resulting number.

§ 46.223 Tax credit.

The dealer is allowed a credit of up to $500 against the total floor stocks tax. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

Filing Requirements

§ 46.231 Floor stocks tax return.

Form 5000.28T09, 2009 Floor Stocks Tax Return—Tobacco Products and Cigarette Papers and Tubes, is available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, OH 45202–5215.

§ 46.232 Preparation of floor stocks tax return.

The dealer must complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 46.233 Payment of floor stocks tax.

(a) *Electronic funds transfer.* If the dealer pays any other excise taxes collected by TTB by electronic funds transfer, then the dealer must also send the payment for the floor stocks tax by an electronic funds transfer. Other dealers may voluntarily elect to pay the floor stocks tax by electronic funds transfer. Electronic funds transfers of floor stocks tax must be received on or before July 31, 2009.

(b) *Check or money order.* Dealers not paying floor stocks tax by electronic fund transfer must pay by a check or money order sent with Form 5000.28T09.

§ 46.234 Tax payment deadline.

Section 701 of Public Law 111–3 specifies a tax payment deadline of August 1, 2009. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax is due on July 31, 2009, since August 1, 2009, falls on a Saturday.

§ 46.235 Filing requirements for multiple locations.

The dealer may file a consolidated return if all locations or places of business have the same employer identification number. The dealer also has the option of filing a separate return for each place of business or location.

§ 46.236 Articles in a warehouse.

(a) Articles warehoused at one or more locations must be reported on the tax return representing the location where the articles will be offered for sale.

(b) Articles offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The articles can be reported by a single location or apportioned among several locations.

§ 46.237 Controlled group member.

If the dealer is a member of a controlled group, but has its own employer identification number, the dealer must file a separate floor stocks tax return. The dealer may take the tax credit referred to in § 46.223 if it is apportioned to the dealer as a member of the controlled group.

Records

§ 46.241 Required records.

The dealer must maintain:

(a) Inventory records;

(b) Tax computation records;

(c) Names, addresses and employer identification numbers of all controlled group members, if applicable;

(d) A copy of the tax return, if the dealer filed one;

(e) A list of locations covered by the tax return; and

(f) A copy of any alternate method or procedure approval issued under § 46.263.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.242 Period for maintaining records.

The dealer must maintain the required records for a period of three years from the due date of the tax return or the date the return was filed, whichever is later. However, the appropriate TTB officer may require, in writing, that the dealer keep these records for an additional period of not more than 3 years.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.243 Articles at multiple locations.

The dealer must maintain a list of all places where the dealer holds articles subject to the floor stocks tax. This list must include:

(a) Address;

(b) Name of the proprietor (if different);

(c) The employer identification number (if different); and

(d) Types and quantities of articles held at each location.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.244 Location of records.

The dealer must keep the inventory records at the principal place of business. All records must be made available to an appropriate TTB officer upon demand.

(Approved by the Office of Management and Budget under control number 1513–0129)

§ 46.245 Errors in records.

If the inventory records or tax computation records contain an error that resulted in an overpayment of tax, the dealer may file a claim for refund. If the inventory or tax computation records contain an error that resulted in an underpayment of tax, the dealer must file an additional tax return on which the dealer shows and pays the additional tax, interest and any applicable penalties.

(Approved by the Office of Management and Budget under control number 1513–0129)

Claims

§ 46.251 Payment of tax required.

Before the dealer can file a claim for refund, the dealer must have paid the floor stocks tax and subsequently determined that there was an overpayment of the tax.

§ 46.252 Claim based on error on return.

If the dealer overpaid tax due to an error on the return, the dealer may file a claim for refund. The claim must be filed within 3 years from the date the tax return was filed or 2 years from the time the tax was paid, whichever is later. The dealer's claim must be filed on TTB Form 2635 (5620.8). The claim must include detailed and sufficient evidence explaining why the dealer believes the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1513–0030)

§ 46.253 Destruction of articles by a Presidentially-declared major disaster.

After the dealer has paid the floor stocks tax, the dealer may file a claim for refund of tax on articles lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Subpart C of this part prescribes the time, evidence, and procedures for filing such a claim.

§ 46.254 Additional reasons for filing a claim.

(a) *Manufacturer.* Subparts I and K of part 40 of this chapter prescribe the times, reasons and procedures for filing other claims for refunds.

(b) *Export warehouse proprietor.* Subpart G of part 44 of this chapter prescribes the time, evidence, and procedures for filing other claims for refunds.

(c) *Exported taxpaid.* If taxpaid articles are shipped from the United States, the dealer may file a claim for drawback of taxes under subpart K of part 44 of this chapter.

(d) *Importer.* An importer may follow the procedures for filing a claim as set forth in subpart I of part 41 of this chapter.

Alternate Methods or Procedures

§ 46.261 Purpose of an alternate method or procedure.

For purposes of this subpart, an alternate method or procedure is a different way of meeting a requirement imposed by this subpart. An alternate method or procedure must be approved in writing by TTB.

§ 46.262 Application.

The dealer seeking approval of an alternate method or procedure under this subpart must apply in writing to the National Revenue Center, 550 Main Street, Room 8002, Cincinnati, Ohio 45202–5215. The dealer must describe the alternate method or procedure and reasons the dealer wishes to use it. The dealer cannot use the alternate method until the dealer receives written approval from the appropriate TTB officer.

§ 46.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

(a) There is good cause for its use;

(b) It is consistent with the purpose and effect intended by the prescribed method or procedure;

(c) It affords equivalent security to the revenue;

(d) It is not contrary to any provision of law;

(e) It will not result in an increase in cost to the Government;

(f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes; and

(g) It is not a method or procedure that relates to the payment or collection of tax.

§ 46.264 Withdrawal of an approval.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. The appropriate TTB officer will give the dealer a written notice of the withdrawal.

TTB Authorities

§ 46.270 [Reserved]

§ 46.271 Entry, examination and testimony.

Appropriate TTB officers, in performing official duties, may enter any premises to examine articles subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate TTB officers may audit and examine all articles, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining, or collecting floor stocks tax. They may take testimony, under oath, of any person when inquiring as to proper payment of floor stocks taxes.

§ 46.272 Issuance of summons.

Appropriate TTB officers can issue summonses when there is no referral to the Justice Department under the authority stated in § 70.22 of this chapter. The summons will state a place and time for such items or person to appear. TTB will issue a summons to require:

(a) Any books of account or other data pertaining to liability for floor stocks tax;

(b) Any person liable for the floor stocks tax or having possession of books of account or other data; and

(c) Any other appropriate person in connection with the books or tax liability.

§ 46.273 Refusing entry or examination.

If the dealer or another person in charge of the premises refuses to admit any appropriate TTB officer or prevents any appropriate TTB officer from examining the records or articles, the dealer may be liable for the penalties described in 26 U.S.C. 7342 or 7212.

§ 46.274 Penalties for failure to comply.

If the dealer fails to follow the regulations set forth in this subpart, TTB may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against the dealer if the dealer does not timely file the tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

■ 29. The authority citation for part 71 is revised to read as follows:

Authority: 26 U.S.C. 5271, 5181, 5712, 5713, 7805, 27 U.S.C. 204.

■ 30. Section 71.46 is revised to read as follows:

§ 71.46 Suspension and revocation of tobacco permits.

Whenever the appropriate TTB officer has reason to believe that any person has not in good faith complied with any of the provisions of 26 U.S.C. chapter 52 or regulations issued thereunder, or has not complied with any provision of 26 U.S.C. which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue a citation for the revocation or suspension of such permit.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

■ 31. Section 71.49b is revised to read as follows:

§ 71.49b Denial of application for tobacco permit.

The appropriate TTB officer may issue a citation for the contemplated disapproval of an application for a tobacco permit provided for in 26 U.S.C. 5713, if the appropriate TTB officer on examination of the application has reason to believe—

(a) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in § 40.61 of this chapter; or

(c) The applicant (including, in the case of a corporation, any officer, administrator, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or has failed to disclose any material information required or made any material false statement in the application.

(72 Stat. 1421, as amended; 26 U.S.C. 5712)

Signed: March 10, 2009.

John J. Manfreda,

Administrator.

Approved: March 12, 2009.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E9–7077 Filed 3–27–09; 11:15 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN04

Posttraumatic Stress Disorder

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms an amendment to the Department of Veterans Affairs (VA) adjudication regulations regarding service connection for posttraumatic stress disorder (PTSD) that eliminated the requirement of evidence corroborating occurrence of the claimed in-service stressor in claims in which PTSD is diagnosed in service. This amendment is necessary to facilitate proof of service connection in such claims. By this amendment, we intend to more quickly adjudicate claims for service connection for PTSD for these veterans.

DATES: The interim final rule became effective on October 29, 2008, and is applicable to claims pending before VA on the effective date of that rule, as well as to claims filed after that date.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319–5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 29, 2008, at 73 FR 64208, VA published an interim final rule amending 38 CFR 3.304(f) to relax the requirement for establishing service connection for PTSD that was diagnosed in service. We added a new paragraph to provide that, if the evidence shows that a veteran's PTSD was diagnosed during service and the claimed stressor is related to that service, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

We provided a 30-day comment period that ended November 28, 2008. We received one comment. The commenter supported the relaxed standards for providing benefits for veterans who were diagnosed with PTSD while in service, but objected to requiring a veteran to show a stressor consistent with the circumstances, conditions, or hardships of the veteran's service. The commenter felt that the requirement was especially troublesome in a theater of combat such as Iraq where combat is experienced by troops with varying military occupational specialties and who, because of the circumstances of their service, may not be able to corroborate or establish the circumstances or conditions of their stressors.

We make no change based on this comment. The language to which the commenter objects is mandated by 38 U.S.C. 1154(a). Section 1154(a) requires VA to include in regulations pertaining to service connection of disabilities provisions requiring VA to consider ''the places, types, and circumstances'' of a veteran's service when deciding a claim for service connection. Also, the inclusion of that language in the regulation makes it parallel to 38 U.S.C. 1154(b) in ensuring that the stressor claim is plausible in light of what is known of the veteran's service.

VA appreciates the comment submitted in response to the interim final rule. Based on the rationale stated in the interim final rule and in this document, we now affirm as a final rule the amendments made by the interim final rule.

Administrative Procedure Act

This document affirms without any changes amendments made by an interim final rule that is already in effect. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no consequential effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: March 23, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Part 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

The interim final rule amending 38 CFR Part 3 that was published at 73 FR 64208 on October 29, 2008, is adopted as a final rule without change.

[FR Doc. E9–7229 Filed 3–30–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–31; FAR Case 2006–032; Item I; Docket 2007–0002; Sequence 11]

RIN 9000–AK78

Federal Acquisition Regulation; FAR Case 2006–032, Small Business Size Rerepresentation

Correction

In rule document E9–5871 beginning on page 11821 in the issue of Thursday,

March 19, 2009 make the following corrections:

52.212–5 [Corrected]

1. On page 11825, in the third column, in 52.212–5, in the clause,

''CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)''

should read

''CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (APR 2009)''.

2. In the same clause, in the same section, paragraph (b)(16) is printed to read as set forth below:

(b) * * *

(16) 52.219–28, Post Award Small Business Program Rerepresentation (APR 2009) (15 U.S.C. 632(a)(2)).

52.219–28 [Corrected]

3. On page 11825, in the third column, in 52.219–28, in the clause,

''POST–AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (MAR 2009)''

should read

''POST–AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (APR 2009)''.

[FR Doc. Z9–5871 Filed 3–30–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XO11

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is announcing the opening and closing dates of the Amendment 80 cooperative's Atka mackerel directed fishery within the harvest limit area (HLA) in Statistical Areas 542 and 543 (Area 542 and Area 543), and the opening and closing dates of the BSAI Trawl Limited Access Atka mackerel directed fishery within the harvest limit area (HLA) in Statistical Area 542 . This action is necessary to fully use the 2009 A season HLA limits of Atka mackerel in Areas 542 and 543 of the Bering Sea and Aleutian Islands management area (BSAI).

DATES: The directed fishery in the HLA for Area 542 by the Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in Area 542, opens effective 1200 hrs, A.l.t., March 27, 2009, through 1200 hrs, A.l.t., April 6, 2009.

The directed fishery in the HLA for Area 542 by the Amendment 80 cooperative vessels authorized to participate in the second HLA fishery in area 542, opens effective 1200 hrs, A.l.t., April 7, 2009, through 1200 hrs, A.l.t., April 15, 2009.

The directed fishery in the HLA for Area 542 by the BSAI Trawl Limited Access vessels authorized to participate in the first HLA fishery in Area 542, opens effective 1200 hrs, A.l.t., March 27, 2009, through 1200 hrs, A.l.t., April 6, 2009.

The directed fishery in the HLA for Area 543 by the Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in Area 543, opens effective 1200 hrs, A.l.t., March 27, 2009, through 1200 hrs, A.l.t., April 6, 2009.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 10, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XO11,'' by any one of the following methods:

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

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

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

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

In accordance with the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) the HLA limit of the A season allowance of the 2009 TAC for Atka mackerel in Area 542 is 3,314 metric tons (mt) and in Area 543 is 1,739 mt for the Amendment 80 cooperative. For BSAI trawl Limited Access in Area 542, the HLA limit of the A season allowance of the 2009 TAC for Atka mackerel is 348 mt. NMFS previously announced the opening and closing dates of the first and second directed fisheries within the HLA in Statistical Areas 542 and 543 (74 FR 5625, January 30, 2009) and (74 FR 8216, February 24, 2009). NMFS has determined that approximately 1,111 mt of Atka mackerel remain in the A season HLA limit in Area 542 and approximately 1,726 mt of Atka mackerel remain in the A season HLA limit in Area 543 for vessels participating in the Amendment 80 cooperative. NMFS has also determined that approximately 273 mt of Atka mackerel remain in the A season HLA limit in Area 542 for vessels participating in the BSAI Trawl Limited Access fishery. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season HLA limits of Atka mackerel in Areas 542 and 543, NMFS is terminating the previous closures and is opening directed fishing for Atka mackerel in the HLA of Areas 542 and 543 for Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in Areas 542 and 543. NMFS is also terminating the previous closure and is opening directed fishing for Atka mackerel in the HLA of Area

542 for BSAI Trawl Limited Access vessels authorized to participate in the first HLA fishery in Area 542. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fishery in the HLA for Areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the fishery.

The directed fishery in the HLA for Area 542 by the Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in Area 542, opens effective 1200 hrs, A.l.t., March 27, 2009. The HLA fishery in Area 542 will remain open until 1200 hrs, A.l.t., April 6, 2009.

The directed fishery in the HLA for Area 542 by the Amendment 80 cooperative vessels authorized to participate in the second HLA fishery in Area 542, opens effective 1200 hrs, A.l.t., April 7, 2009. The HLA fishery in Area 542 will remain open until 1200 hrs, A.l.t., April 15, 2009.

The directed fishery in the HLA for Area 542 by the BSAI Trawl Limited Access vessels authorized to participate in the first HLA fishery in Area 542, opens effective 1200 hrs, A.l.t., March 27, 2009. The HLA fishery in Area 542 will remain open until 1200 hrs, A.l.t., April 6, 2009.

The directed fishery in the HLA for Area 543 by the Amendment 80 cooperative vessels authorized to participate in the first HLA fishery in area 543, opens effective 1200 hrs, A.l.t., March 27, 2009. The HLA fishery in Area 543 will remain open until 1200 hrs, A.l.t., April 6, 2009.

After the effective dates of these closures, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening and closing of the fishery for the HLA limit established for Areas 542 and 543 pursuant to the 2009 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 23, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 10, 2009.

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

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

Dated: March 25, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–7178 Filed 3–26–09; 4:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 60
Tuesday, March 31, 2009

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 55 and 81

[Docket No. 00–108–7]

RIN 0579–AB35

Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing further amendments that would establish a herd certification program to eliminate chronic wasting disease from farmed or captive cervids in the United States. Under the 2006 Chronic Wasting Disease (CWD) rule, participating deer, elk, and moose herds would have to follow CWD Herd Certification Program requirements for animal identification, testing, herd management, and movement of animals into and from herds. This document proposes additional changes to the program regarding recognition of State bans on the entry of farmed or captive cervids for reasons unrelated to CWD, the number of years an animal must be monitored for CWD before it may move interstate, interstate movement of cervids that originated from herds in proximity to a CWD outbreak, herd inventory procedures, and several other matters. These actions are intended to help eliminate CWD from the farmed or captive cervid herds in the United States.

DATES: We will consider all comments that we receive on or before June 1, 2009.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0118* to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. 00–108–7, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–108–7.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Dean E. Goeldner, Senior Staff Veterinarian, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of cervids (members of Cervidae, the deer family) that, as of October, 2008, has been found only in wild and captive animals in North America and in captive animals in the Republic of Korea. First recognized as a clinical ''wasting'' syndrome in 1967, the disease is typified by chronic weight loss leading to death. There is no known relationship between CWD and any other TSE of animals or people. Species known to be susceptible to CWD via natural routes of transmission include Rocky Mountain elk, mule deer, white-tailed deer, black-tailed deer, and moose.

In the United States, CWD has been confirmed in free-ranging deer and elk in Colorado, Illinois, Kansas, Nebraska, New Mexico, New York, South Dakota, Utah, West Virginia, Wisconsin, and Wyoming, and, as of October 2008, in 32 farmed elk herds and 11 farmed or captive white-tailed deer herds in Colorado, Kansas, Michigan, Minnesota, Montana, Nebraska, New York, Oklahoma, South Dakota, and Wisconsin. The disease was first detected in U.S. farmed elk in 1997. It was also diagnosed in a wild moose in Colorado in 2005.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock. The Animal and Plant Health Inspection Service's (APHIS') regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock.

On July 21, 2006, we published a final rule in the **Federal Register** (71 FR 41682, Docket No. 00–108–3; ''the CWD final rule'') amending 9 CFR subchapter B by establishing regulations in part 55 for a Chronic Wasting Disease Herd Certification Program to help eliminate chronic wasting disease (CWD) from the farmed or captive cervid herds in the United States. Under that rule, owners of deer, elk, and moose herds who choose to participate would have to follow the program requirements of a cooperative State-Federal program for animal identification, testing, herd management, and movement of animals into and from herds. The CWD final rule also amended 9 CFR subchapter C by establishing a new part 81 containing interstate movement requirements to prevent the spread of CWD.

After publication of the CWD final rule, but before its effective date, APHIS received three petitions requesting reconsideration of several requirements of the rule. On September 8, 2006, we published a notice in the **Federal Register** (71 FR 52983, Docket No. 00–108–4) that delayed the effective date of the CWD final rule while APHIS considered those petitions. On November 3, 2006, we published another notice in the **Federal Register** (71 FR 64650–64651, Docket No. 00–108–5) that described the nature of the petitions and made the petitions available for public review and comment, with a comment period closing date of December 4, 2006. We subsequently extended that comment

period until January 3, 2007, in a **Federal Register** notice published on November 21, 2006 (71 FR 67313, Docket No. 00–108–6).

We received 77 comments by that date. They were from cervid producer associations, individual cervid producers, State animal health agencies, State wildlife agencies, and others.

We have carefully considered the merits of the petitions and of the public comments received in response to them. We believe that the petitioners and commenters identified several areas where the CWD final rule could be more effective or less burdensome, and we believe the CWD final rule could be improved by making several changes to its requirements. We are therefore proposing certain changes to the CWD final rule, described below. We plan to withdraw the 2006 CWD final rule published on July 21, 2006 and issue a revised final rule based on this proposal and on the CWD final rule, after evaluating public comments on this proposal.

Reconciling Federal and State Requirements for the Interstate Movement of Captive Cervids

One goal of the CWD final rule was to provide a consistent, nationwide standard for the interstate movement of cervids, when such animals are allowed to move in interstate commerce. For that reason, the CWD final rule provided a single set of CWD requirements to follow when moving cervids interstate. These requirements, developed with input from States and producers, were meant to standardize a variety of differing CWD requirements and restrictions imposed by States that regulate the entry of cervids from other States. For example, different States have different requirements for how long a cervid must have been in a herd subject to CWD monitoring in order to move, and different requirements for the type of animal identification required for cervids moving interstate.

APHIS continues to believe that the Federal CWD regulations should provide a consistent, nationwide set of requirements designed to address CWD risk for cervids that move interstate. Where the Federal CWD final rule establishes a standard for a particular aspect of interstate movement of cervids—identification requirements, for example—the requirement in the Federal CWD final rule will preempt any inconsistent State requirement. However, as the petitions and several comments on the petitions stated, the CWD final rule did not clearly resolve the issue of whether a State has authority to ban the movement of any farmed or captive cervids into the State due to reasons other than CWD risks.

APHIS has sought and received further information from States on the nature of their State CWD regulations and the reasons States have determined such requirements to be necessary. In States that allow farmed or captive cervids from other States to enter under restrictions, rather than prohibiting their entry entirely, we found that the purpose of the CWD restrictions and the methods they employed were similar to the purpose and methods of the CWD final rule. In almost all cases, we believe that the requirements in the Federal-State cooperative CWD final rule will achieve the State goal of allowing interstate movement of farmed or captive cervids under conditions sufficient to prevent the spread of CWD. In one case, discussed in the next section of this document titled ''Monitoring Period Required to Move Cervids Interstate,'' we believe the ''monitoring period'' requirement currently employed by some States is superior to the requirement in the CWD final rule, and accordingly we propose to revise the CWD final rule with respect to the length of time a farmed or captive cervid moved interstate must have spent in an approved CWD herd certification program, and thus the length of time it has been subject to monitoring for CWD and other herd requirements.

However, in the course of considering the petitions and comments on them, APHIS has found that a number of States prohibit the entry of farmed or captive cervids for a variety of reasons, and to control a variety of risks, which are unrelated to CWD. State-imposed bans on the movement of cervids that are unrelated to CWD risks will not be affected by the CWD final rule. While Federal CWD requirements preempt State CWD requirements when interstate movement of cervids is allowed, we do not believe it is necessary to preempt State laws or regulations that prohibit the entry of farmed or captive cervids for other reasons when States have articulated sound reasons for such bans. This would include a State that bans entry of cervids because the State does not have or is phasing out a farmed or captive cervid industry and States that impose restrictions to address diseases for which APHIS does not prohibit or restrict interstate movement.

Some States that ban the entry of farmed or captive cervids have cited concerns about the potential spread of CWD, brucellosis, and tuberculosis as one reason for the bans. This is not, in the agency's view, a persuasive reason to maintain a ban, because Federal regulations[1] are specifically designed to allow the interstate movement of cervids without disseminating these diseases. We believe that the proposed Federal CWD requirements would be effective and, if finalized, would preempt conflicting State requirements. However, States also cite other reasons for their bans on the entry of farmed or captive cervids, such as risks from a number of diseases and parasites associated with cervids. Excluding examples for which there are already mandatory Federal testing or interstate movement requirements, the diseases and parasites that support the need for a ban in some States include epizootic hemorrhagic disease/bluetongue, Johne's disease, malignant catarrhal fever, and the meningeal worm (*Parelaphostrongylus tenuis*). States also base cervid bans on concerns that farmed or captive cervids could contain undesirable gene sequences that could be introduced into wild cervid populations if the cervids escape captivity. These States noted that maintaining the genetic purity of their native elk and deer populations was important to sportsmen and natural resource interests. More generally, States with bans cited concerns that escaped farmed or captive cervids would compete with wild populations for food and habitat. Some States also cited laws making it illegal to hold in captivity certain species or breeds of cervids covered by the CWD final rule. Some States imposed a ban partly to discourage high-fence trophy hunting operations that depend on continual restocking from out-of State sources. Finally, some States cited environmental concerns, including ecosystem degradation resulting from cervids maintained in captivity or escaped cervids.

APHIS has concluded that many of the above concerns are substantive and that we should propose a way to accommodate State interests in these areas. APHIS believes that we can best address the concerns of States that have imposed a ban on the entry of farmed or captive cervids for reasons unrelated to CWD by changing the CWD final rule to recognize such a ban for those States. Therefore, we propose to add a new § 81.5 to the CWD final rule to clarify that state laws and regulations prohibiting the entry of farmed or captive cervids for reasons unrelated to CWD are not preempted by this part.

[1] For interstate movement requirements for cervids and other animals with respect to these diseases, see 9 CFR part 77 for tuberculosis, 9 CFR part 78 for brucellosis, and 9 CFR part 81 for CWD.

Monitoring Period Required To Move Cervids Interstate

Under the CWD final rule, during its first year of implementation, cervids would be allowed to move interstate if they have been in an approved CWD Herd Certification program, and thus subject to monitoring for CWD and other requirements, for at least 1 year. The CWD final rule increased this length-of-time requirement in succeeding years of implementation, so the time animals would have had to be in a herd certification program in order to move interstate gradually increased to 2 years, then 3, then 4, then 5 years. It was the intent of the CWD final rule to provide a consistent, nationwide standard for the interstate movement of cervids. Existing State laws and regulations addressing movement of cervids vary in the amount of time that the animals must have been in a certification program prior to entry, and some States do not allow the entry of any cervids for non-CWD-related reasons, as discussed earlier. The gradual escalation of the Federal standard in the CWD final rule to 5 years was intended to achieve the desired level of risk control represented by 5 years of program participation and disease-free surveillance and monitoring, but to do so in a gradual manner that would not cause widespread economic harm to producers by making it impossible for some of them to move animals interstate until 5 years after they join the CWD Herd Certification Program.

The petitioners and many commenters on the petitions questioned whether the gradual approach reflected in the rule's Federal standard provided adequate protection, especially during the first 2 years of program implementation. The petitioners and most commenters suggested that the available science and the known epidemiology of CWD indicate that animals should be monitored for CWD for approximately 5 years before they can be considered safe to move interstate. Some commenters stated that studies of the natural incubation period in the wild are difficult to conduct and no comprehensive studies have been done; therefore, APHIS should not assume that most cervids will develop CWD within a year or two after infection. They noted that while animals developed signs of CWD within 1–2 years of infection in several cited research studies, these were studies of confined animals that were directly infected with large quantities of the CWD agent. This type of direct experimental infection is known to result in minimum incubation periods for diseases in general.

In view of these uncertainties about the range of incubation periods for CWD, the commenters suggested that it would be prudent for the CWD program to monitor animals for 5 years before they can be considered safe to move interstate. The 5-year period was suggested because it is the period that most researchers and State CWD programs agree is a reasonable outer boundary for the incubation period for CWD.

In addition, comments on the petitions revealed that most State governments and industry representatives agree that many cervid producers who rely on moving animals interstate for the success of their businesses have already participated in a State CWD herd certification and monitoring program for 5 years or longer, would not be adversely affected by the adoption of a 5-year standard, and believe a 5-year standard would provide better protection against the spread of CWD than a lesser monitoring standard.

After considering comments, APHIS has concluded that the CWD program would be enhanced by requiring that farmed or captive cervid herds must have been monitored for at least 5 years before animals from such herds may be moved interstate. The CWD final rule discussed why it is important to consider possible exposure to CWD up to 5 years in the past when evaluating the CWD risk of a herd. The CWD final rule would have required 5 years of monitoring for a herd to reach the Certified level in the CWD program, although it would have established a gradually increasing timetable that, in early years of program implementation, would have allowed interstate movement of animals from herds with as little as 1 year of monitoring. We now believe that CWD incubation periods have not been sufficiently studied to justify using shorter monitoring periods initially and ''ramping up'' the monitoring requirement over time. Also, upon reexamining several research reports, we believe that they support the conclusion that natural incubation periods may last up to 5 years in enough cases to warrant revising the CWD program as designed in the CWD final rule. For example, the CWD final rule referred to a study [2] at the Colorado Division of Wildlife, Foothills Wildlife Research facility, which found that for a studied group of elk that were naturally exposed to CWD in a contaminated environment, the average incubation time was 26 months and the incubation times ranged from 18 to 36 months. After the study ended, in the same group of elk held in the same pens, there was a case of CWD in an individual animal that occurred 5 years after the last CWD death in the herd.[3] This could have been the result of a later environmental exposure, or it could represent a 5-year incubation period.

Further supporting the points made by the commenters, in other pathogenesis studies in mule deer and elk at the University of Wyoming,[4] high dose oral inoculation in mule deer produced an incubation period range of 15 months to over 25 months, with an average of 23 months. The researchers acknowledged that experimental infection (single-dose oral exposure to brain material) probably underestimates natural incubation times, as it is likely that greater exposure results in shorter duration of incubation. This supports the conclusion that incubation times for experimental infections most likely represent the range of minimum incubation times, so regulatory risk considerations should not be based solely on incubation periods demonstrated by experimental direct inoculations.

Based on our reevaluation of incubation studies, we believe that the longest incubation periods for regulated cervids will likely fall between 3 and 5 years. While a CWD program with a 3-year monitoring period might catch a large majority of infected animals, it appears that there would be enough animals that would become infected after a 4- or 5-year incubation period that a 3-year monitoring period would allow continued spread of CWD and reduce the effectiveness of the program.

Therefore, we are proposing to remove the gradual-escalation approach from the CWD final rule and replace it with a requirement that farmed or captive cervids moved interstate must be from herds that have had at least 5 years' monitoring for CWD (i.e., herds that have achieved ''Certified'' status in the certification program). This requirement is based on our interpretation of currently available research, and we may propose to modify it in the future if additional research provides a basis for doing so. This change would affect the requirements

[2] Miller *et al.*, 1998. Epidemiology of Chronic Wasting Disease in Captive Rocky Mountain Elk, Journal of Wildlife Diseases, 34:532–538.

[3] Miller, personal communication.

[4] Williams *et al.* 2002. Chronic Wasting Disease of Deer and Elk: A Review With Recommendations for Management. Journal of Wildlife Management 66(3): 551–563.

for cervids moved interstate for non-slaughter purposes on the basis of their participation in the certification program; it would not affect the movement of cervids to slaughter.[5]

To make this change, we propose to amend paragraph (a) of § 81.3 as published at 71 FR 41706, which deals with interstate movement of animals from cervid herds that are enrolled in the CWD Herd Certification Program and are eligible for a certification status level based on the length of time they have successfully met program standards. We propose to amend this paragraph to state that the farmed or captive cervid must be enrolled in the CWD Herd Certification Program in a herd that has achieved Certified status, and must be accompanied by a certificate that states this and that also identifies the herd of origin and states that the animal does not show clinical signs associated with CWD.[6]

The change to the certificate requirement to indicate that the animal does not show clinical signs associated with CWD replaces a required statement that the animal is not a CWD-positive, CWD-exposed, or CWD-suspect animal. Requiring that the certificate state that the animal does not show clinical signs associated with CWD would be consistent with the information that can be obtained from an examination and with other interstate animal movement regulations. To complement this change, we would also remove the definitions of the terms *CWD-positive animal*, *CWD-exposed animal*, and *CWD-suspect animal* from § 81.1, because these terms would no longer be used in part 81.

Proximity of Herd of Origin to CWD Occurrences and CWD History of an Animal's Herd

Some commenters also raised the concern that the CWD final rule would disrupt State program efforts to provide an additional level of protection against the spread of CWD by prohibiting entry of farmed or captive cervids from those areas where CWD has been detected. Several States currently implement such policies in various forms. The form of the State requirement is usually to list either counties, regions within a State, or entire States where CWD has been detected and ban entry of cervids from the listed areas.

We believe this is a useful risk reduction approach for States that wish to add another level of protection to the requirements in the CWD final rule. However, not all States believe they need the additional risk reduction. Also, although all the States that use this method agree that its purpose is to prohibit entry of cervids from areas in proximity to occurrences of CWD, there is substantial variation in the details of such requirements for different States.

Therefore, we propose to change the CWD final rule to allow States to elect not to receive farmed or captive cervids from areas in proximity to occurrences of CWD in wild cervids. We also propose to establish a single Federal standard for such proximity in order to make the standard consistent among all States with such restrictions. We propose to do this by (1) establishing a list of States that do not accept entry of farmed or captive cervids from herds of origin in proximity to CWD occurrences in wild cervids and (2) changing the certificate requirement for interstate movement of farmed or captive cervids to document when animals are from herds that are in proximity to CWD occurrences in wild cervids.

Section 81.3(a)(2) of the CWD final rule requires that farmed or captive cervids that are moved interstate based on their participation in the CWD Herd Certification Program must be accompanied by a certificate issued by a State or Federal official or an accredited veterinarian. The certificate must contain information to help identify the animals and document their status in the certification program. The contents required for a certificate are set out in § 81.4 as published at 71 FR 41706.

To be consistent with the change discussed above that animals moved interstate must be from herds with Certified status, we propose to change the references in § 81.4 to herds ''participating in the CWD Herd Certification Program'' to instead refer to herds ''that have achieved Certified status in the CWD Herd Certification Program.'' We also propose to add the following requirements to this paragraph:

- The certificate would have to include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian that the animals are not from farmed or captive herds where CWD has been diagnosed within the past 5 years or epidemiologically linked to herds where CWD has been diagnosed within the past 5 years.

The proposal to have a time limit of 5 years when considering CWD infection or epidemiological linkage is based on the same evidence cited in the CWD final rule and in this proposal to support the requirement for 5 years of monitoring before a cervid may be moved interstate. That decision was based on several factors, including the probable maximum incubation time for CWD and timespans realistically needed for reporting and evaluation of CWD occurrences.

- The certificate would have to also include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian as to whether or not the animals' premises are within 25 miles (40 km) of a federally or State-identified case of CWD in wild deer, elk, or moose, or within 25 miles (40 km) of an area where CWD has become established in wild deer, elk, or moose, as defined by APHIS and the State.

We believe that this proposed requirement provides a reasonable standard that can be consistently applied and that provides the level of additional risk reduction that meets or exceeds that of similar current State requirements. The proposal to set the limits of proximity to CWD cases in the wild at 25 miles (40 km) is consistent with proximity guidelines used in some State CWD programs applicable to both captive and wild cervids, and is also consistent with the current international practice of several countries for importing and exporting elk. For example, the Quebec Department of Agriculture, Fisheries and Food requires a statement on certificates accompanying elk imported into Quebec that they are from a farm that ''is located more than 40 km from an enterprise with an epidemiological link to a case of CWD.'' The United States regulations for importing elk from Canada call for a similar statement.[7]

In addition to adding this proximity certification for moving farmed or captive cervids interstate, we propose to establish a list of States that do not accept entry of farmed or captive cervids from areas in proximity to CWD occurrences. This list, called ''States That Limit Cervid Entry Based on Proximity to CWD Occurrences,'' would be maintained and revised by APHIS, and would be made available by APHIS on its Web site and by mail upon

[5] The final rule allows farmed or captive deer, elk, or moose to be moved to slaughter regardless of whether or not their herds are enrolled in the certification program, or, if enrolled in the program, regardless of their status relative to movement requirements, if they have two forms of animal identification and are accompanied by a certificate issued in accordance with § 81.4.

[6] Later in this document, we also propose a change that would redesignate this paragraph (a) as paragraph (b).

[7] In ''Protocol Respecting The Importation Of Cervids From Other Provinces Or Countries Into Quebec Under The Animal Health Protection Act (R.S.Q., c. P–42)'' and ''Protocol For the Importation of Farmed Cervids From Canada,'' USDA, APHIS, Veterinary Services, National Center for Import and Export.

request. The initial list would include all States that currently have State laws or regulations that ban entry of farmed or captive cervids from areas in proximity to CWD occurrences in the wild. At any time, a State could request to be removed from the list if it changes to allow entry of farmed or captive cervids from areas in proximity to CWD occurrences in the wild. Any State not on the list could request to be added to the list by sending the Administrator a written request to be added and a copy of the State law or regulation that bans entry of farmed or captive cervids from areas in proximity to CWD occurrences in the wild.

This list of States, in conjunction with the new requirement of a certification regarding proximity, will allow State and Federal representatives to determine when a shipment of cervids may not be moved to a destination State due to proximity restrictions. To make it clear that these new requirements apply in two ways—animals that do not meet them may not be moved interstate to listed States, and animals that do meet them must have that fact documented in the certificate—we propose to redesignate the current introductory text of § 81.3 as paragraph (a) and add the new requirements in subparagraphs (a)(1) and (a)(2) as set out in the proposed regulatory text of this document.

We are proposing one more change related to the risks associated with maintaining a CWD herd in proximity to known occurrences of CWD in wild cervids. While the level of such risk is uncertain, it appears prudent to mitigate the risk. A number of herds have been long established in proximity to known occurrences of CWD in the wild; in most cases, the herd was established before CWD was found in wild animals in the area. Most of these herds have participated in State CWD programs and are eligible for the Federal-State cooperative CWD program. It would be very difficult to bar such herds from participation in the program. It would also be unnecessary if the herds have already effectively complied with program requirements for some years. However, we have determined that it would add to the effectiveness of CWD control if, in the future, no new herds were established in proximity to CWD occurrences in the wild.

Therefore, we propose to amend § 55.22(a), *Participation and enrollment*, by adding a provision that an application for participation may also be denied if APHIS or the State determines that the applicant's herd was established after the effective date of a final rule following this proposal on a premises within 25 miles (40 km) of a Federally or State-identified case of CWD in wild deer, elk, or moose, or within 25 miles (40 km) of an area, as defined by APHIS and the State, where CWD has become established in wild deer, elk or moose.

Monitoring and Surveillance of CWD in Wild Cervids

The proposed changes discussed above concerning proximity of herds to known occurrences of CWD in wild cervids would only be practical if reliable data is available to identify areas where CWD occurs in the wild. States with significant wild cervid populations currently conduct monitoring and surveillance activities for CWD in the wild. These activities are often conducted by State wildlife agencies, though some involve agriculture agencies, and often Federal agencies provide assistance or technical support when resources are available to do so. The types and extent of surveillance for CWD in the wild vary. The most extensive surveys rely on testing samples submitted by hunters. Some States also employ surveillance methods such as harvesting and testing a geographically targeted random sampling of wild deer and elk, or testing vehicle-killed cervids, to estimate CWD distribution.

We expect States would continue such surveillance activities. Because several changes in this proposed rule rely on identifying areas where CWD occurs in the wild, we also propose to make such continued surveillance a requirement for a State program to become an Approved State CWD Herd Certification Program. Specifically, we propose to add this requirement to the list in § 55.23, *Responsibilities of States and enrolled herd owners,* as paragraph (a)(12).

Herd owners and Federal and State representatives would use reports from these monitoring and surveillance activities to determine, for purposes of the changes discussed above, when a premises is ''within 25 miles (40 km) of a Federally or State-identified case of CWD in wild deer, elk, or moose, or within 25 miles (40 km) of an area, as defined by APHIS and the State, where CWD has become established in wild deer, elk, or moose.''

Additional Changes to Responsibilities of States and Enrolled Herd Owners (§ 55.23)

We propose to make several changes to § 55.23 to clarify the responsibilities of States and owners participating in the cooperative Federal-State CWD program, and to reduce the compliance burden where it is practical to do so.

State Enforcement of Quarantines

Paragraph (a)(4) of § 55.23 requires States to place all known CWD-positive, CWD-exposed, and CWD-suspect animals and herds under movement restrictions, with movement of animals from those herds only for destruction or under permit. We now propose to expand this requirement to prohibit CWD-positive, CWD-exposed, and CWD-suspect herds from adding animals to the herd from outside sources. The CWD final rule did not include such a requirement because it seemed unlikely that many owners would choose to expand herds that were under restrictions and possibly destined for destruction. However, there have been some cases where the owners of CWD-positive, CWD-exposed, and CWD-suspect herds have added new animals. This affects the CWD indemnity program, which makes indemnity available for eligible animals based on the inventory at the time the movement restrictions are imposed. An increase in the size of a herd under restriction due to CWD also causes a corresponding increase in the program resources devoted to the herd, and in the amount of work for Federal and State representatives working with the herd. For instance, if animals from several additional herds are added to a CWD-exposed or CWD-suspect herd that is later found positive for CWD, those additional herds must also be evaluated during traceback as possible sources of CWD. Also, increasing the herd size potentially increases the total number of infected animals, and the risk of CWD spread (e.g., more animals means more opportunities for an animal to escape confinement).

To address this problem, we propose to change § 55.23(a)(4) to specifically state that no movement of animals into CWD-positive, CWD-exposed, and CWD-suspect herds is allowed.

Herd Inventory Procedures

We are also proposing to make changes to § 55.23 to address issues concerning the practicality and the burden on owners associated with paragraph (b)(4), which describes herd recordkeeping and annual inventory requirements.

Section 55.23(b)(4) of the CWD final rule requires owners to maintain herd records that include a complete inventory of animals, the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of each animal, and all

individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. We do not propose to change this requirement. However, we do propose to change other requirements in this paragraph, which currently state that the owner must allow an APHIS employee or State representative access to the premises and herd to conduct an annual physical herd inventory to reconcile animals and identifications with the records maintained by the owner. The CWD final rule currently requires that the owner, when this physical inventory occurs, must assemble, restrain, and present the entire herd for inspection under conditions where the APHIS or State official can safely read all identification on the animals. The owner would be responsible for all costs incurred to present the animals for inspection.

Several commenters noted that it was unclear whether an actual physical inventory of assembled animals was required each year, or only ''upon request.'' They also suggested that a physical inventory would impose a considerable burden if conducted on an annual basis. The CWD final rule estimated that for a herd of 50 elk, the annual physical inventory cost would be approximately $1,000, including veterinary fees of approximately $500 and hired labor costs of approximately $500. This cost could be significantly higher in some cases; for example, labor costs for skilled cervid handlers are higher in some areas, and the physical assembly and restraint could cause injury to some cervids, with further costs to the owner for subsequent veterinary care or loss of the animal.

We agree that the CWD final rule language is unclear on the requirement for physical inventories. Our intention is to conduct an actual physical inventory of assembled animals when an APHIS employee or State representative finds it to be needed for program purposes. We propose that a physical assembly would be required at the time a herd is enrolled in the Federal-State cooperative CWD program, in order to provide a reliable baseline record for the herd's participation. After this initial physical assembly for inventory purposes, further physical inventories would be scheduled when the APHIS employee or State representative finds it necessary to verify herd compliance with program standards — for example, if there has been significant movement of animals into or from the herd, or if other conditions warrant a physical inventory to confirm the herd records. Physical inventories would usually be several years apart, and would never be ordered more than once per year, unless we determine that more frequent inventories are needed based on indications that the herd may not be in compliance with CWD Herd Certification Program requirements.

However, some type of herd inventory would be performed annually. When the inventory does not include physical assembly of the entire herd, it would include, at a minimum, review of all owner records documenting animal identification and records of animals added to or removed from the herd. It would also include observation of the herd's unrestrained animals in a viewable, enclosed area or space where the inspector could reconcile all visible identification devices with prior records and check for any obvious inconsistencies between the number, age, and gender of animals observed and the animals documented in the owner records. During such inventories, the owner and the person performing the inventory would work together to resolve any discrepancies to the satisfaction of the person performing the inventory.

This proposed change should also make it possible in many cases to plan the timing of a physical assembly of a herd for inventory so that it is coordinated with cervid testing for brucellosis and tuberculosis. Such testing occurs for cervid herds participating in the cooperative State–Federal Cervid Brucellosis Program or Cervid Tuberculosis Program. The Uniform Methods and Rules for these programs describe when such herds must be assembled and tested for these diseases. For example, to maintain a herd's Certified status with regard to brucellosis, or its Accredited status with regard to tuberculosis, the herd must be retested for the relevant disease every 21 to 27 months under current brucellosis and tuberculosis regulations. This timetable may change in the future. We expect that, in many cases, when a cervid herd participates in the CWD program and one or both of the tuberculosis and brucellosis programs, any required physical assembly of the herd can be planned so that during a single assembly, requirements for all of the programs can be met. For example, the initial physical assembly would serve to establish and confirm the required inventory, records, and individual animal identification requirements for CWD, but it could also be used to conduct testing and any other requirements for the tuberculosis or brucellosis programs. If the APHIS employee or State representative later finds it necessary to schedule another physical assembly for inventory, it is likely that it could be scheduled to allow any required tuberculosis or brucellosis testing to occur during the assembly.

APHIS plans to develop additional guidance in the future, after we gain additional experience working with herd inventories, to clarify when an actual physical inventory of assembled animals will be required, and to provide more information on the different activities involved in the different levels of a physical inventory of assembled animals. When developed, such guidance will be made available in the CWD program Uniform Methods and Rules or in other program guides. Readers should also note that in addition to Federal regulations concerning inventory requirements, individual States may have requirements in this area in State law or regulations.

In § 55.23(b)(4) on page 41704 of the final rule, we also inadvertently omitted accredited veterinarians as one of the types of officials authorized to conduct the herd inventory. Since accredited veterinarians play an important role in implementing the CWD program, we propose to change this reference to also allow access to the premises by an accredited veterinarian who has been designated to conduct an inventory. To implement these changes to inventory requirements, we propose to revise all but the first sentence of § 55.23(b)(4).

Enrollment Dates

Section 55.22(a)(1)(ii)(B) concerns setting an enrollment date for herds that enroll directly in the Federal CWD Herd Certification Program, and ensuring that the enrollment date gives some credit for the time period during which herds substantially met Certification Program standards before they could enroll in the Program. This paragraph reads, in part, ''If APHIS determines that the herd owner has maintained the herd in a manner that substantially meets the conditions specified in § 55.23(b) for herd owners, the first day that the herd participated in such a program. However, in such cases the enrollment date may not be set at a date more than 2 years prior to the date that APHIS approved enrollment of the herd.''

We propose to change that requirement to allow APHIS to set an enrollment date for such herds that is up to 3 years prior to the date APHIS actually processed and approved enrollment. We propose this revision because implementation of the Certification Program has proceeded more slowly than planned, in part due to the need to resolve the issues

discussed in this proposed rule. To minimize possible losses to herd owners who have managed their herds in compliance with program requirements but could not be formally enrolled because no State CWD program was available and the CWD final rule was not in effect, we propose to allow up to 3 years' credit instead of 2. Since this rule also proposes to limit interstate movement to cervids that have been enrolled for 5 years and have achieved Certified status, we expect this change would affect a small number of herds that become enrolled directly in the Federal CWD program after the effective date of a final rule. If such herds qualify for 3 years' credit upon enrollment, animals from the herd could be moved interstate approximately 2 years later if and when the herd achieves Certified status.

Confirmatory DNA Testing of Official Test Samples

On page 41685 of the CWD final rule, we responded to comments that suggested that, after an animal tests positive for CWD, the owner should have the opportunity to have the sample's DNA matched to DNA from the owner's animal to prove that the correct sample was tested. In response, we stated, ''With regard to DNA matching to confirm that positive samples are indisputably associated with the correct animal, we plan to allow such confirmation, at the owner's expense, when the owner of the CWD-positive animal requests it. DNA verification will be possible because our instructions on how to collect and submit tissue samples will require submission of all manmade identification devices on the animal, with part of the ear or skin to which they are attached, in a manner that preserves the chain of custody.''

Since the CWD final rule was published, APHIS has discussed this issue with owners and laboratories and has developed procedures to work with owners who wish to order such confirmatory DNA testing. In this NPRM we propose to change paragraph (c)(1) of § 55.24 (71 FR 41705) of the final rule so that such testing would be available through the following arrangements.

At the time an owner allows tissues samples to be collected from an animal for official CWD testing, the owner would be able to reserve the option for DNA comparison testing by informing the Federal or State representative or accredited veterinarian who collects the tissues. To allow for later DNA comparison testing, the person collecting the tissues would have to also collect from the animal some somatic tissue (usually an ear) that contains an official identification device, along with the tissue samples routinely collected for CWD testing (brain stem, lymph nodes, etc.). Submitting tissues attached to an official ID device establishes a reliable chain of custody that allows later DNA tests to be compared to a tissue sample that verifiably comes from the owner's animal in question.

If the CWD official tests show that owner's animal is CWD-positive, the owner could employ the appeal provisions of § 55.24(c) to request that the tissue samples that were tested for CWD be compared to the ear or other tissues submitted with the animal ID attached. If the DNA in the tissues tested for CWD and the DNA in the tissues attached to the ID device match, there is confidence that the positive CWD tests do in fact pertain to the correct animal. If the DNA in the respective test results does not match, that may justify the Administrator granting the appeal. In such cases the animal would be redesignated CWD-suspect pending further investigation to establish the final proper status of the animal and its herd.

We propose that if an owner requests confirmatory DNA testing, the owner would pay for the cost of the test. If this proposed rule is adopted as final, APHIS will publish additional guidance on how to request confirmatory DNA testing and how to arrange payment for such tests.

To recognize this procedure in the regulations, we propose making changes to the CWD final rule to document the owner's right to order and pay for confirmatory DNA testing when one or more of the owner's animals tests positive for CWD. We would change paragraph (c)(1) of § 55.24, which deals with an owner's right to appeal the designation of their herd's status, by adding a provision for appeals based on the results of a DNA test requested and paid for by the owner to determine whether previous official CWD test results were correctly associated with an animal that belonged to the owner.

Miscellaneous Changes

We also propose to change the definition of *premises identification number (PIN)* in parts 55 and 81 and to add a definition for *National Uniform Eartagging System* to both parts. These proposed changes are intended to achieve greater standardization and uniformity of official numbering systems and eartags used in the National Animal Identification System and in animal disease programs and to enhance animal traceability. We also propose to add the following sentence to the definition of *official animal identification*: ''The CWD program allows the use of either the eight-character or nine-character format for cervids.'' This proposed change would allow use of either larger eartags with nine-character unique numbers, or smaller eartags with eight-character numbers. We propose to allow use of both size tags because the use of the smaller eartags is sometimes advisable to reduce stress on younger elk and deer.

Executive Order 12866 and Regulatory Flexibility Act (RFA)

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the potential effects of the proposed action on small entities. This initial analysis indicates that the benefits of the proposed action would exceed its costs. We do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects.

The changes proposed in this document would, if adopted, modify the requirements set forth in the CWD final rule.[8] For that reason, the economic analysis that follows considers the impact of the proposed changes using the CWD final rule as a baseline. An economic analysis was prepared for the CWD final rule, and that analysis is incorporated in this document by reference.

The proposed changes would have the most impact on cervid farms, most of which are believed to be small in size under the U.S. Small Business Administration's standards.

The proposal to remove the gradual-escalation monitoring period requirement for interstate movement and replace it with a 5-year minimum requirement would adversely impact current farmers with less than 5 years in the program who wish to ship at least some of their animals interstate for purposes other than slaughter. The number of such farmers is unknown, although it is estimated that many, if not most, herd owners who rely on interstate movement for the success of

[8] The effective date of the CWD final rule, which was published in the **Federal Register** on July 21, 2006 (71 FR 41682–41707, Docket No. 00–108–3), has been delayed pending consideration of the changes proposed in this document.

their businesses already meet the 5-year standard by way of their participation in an existing State CWD certification program. Under the proposal, time spent in an APHIS-approved State program would count towards the time needed to satisfy the 5-year requirement, and many farmers have participated in a State program for at least 5 years. It is estimated that at least 20 States have formal CWD certification programs for cervids in place.

Any adverse impact of the proposed 5-year standard on current farmers would be further muted to the extent that a number of States have already adopted that standard themselves. Currently, States have the authority to regulate farmed cervids, including the authority to establish requirements for entry of cervids. In response to APHIS' CWD proposed rule published in December 2003, and its CWD final rule published in July 2006, several States have decided to adopt a 5-year monitoring period requirement for cervids entering those States. Both the December 2003 proposed rule and the July 2006 final rule included an eventual 5-year monitoring period requirement for interstate movement.

For those farmers who would be adversely affected by a shift to a 5-year monitoring period requirement, the economic impact would vary depending on the circumstances of each—such as the time, if any, already spent in a State program, the number and value of animals that would otherwise be shipped interstate, and the alternative opportunities available for sales within the State. Although data for individual herd owners are not available, those who are located in States that do not now have a State program and who cannot qualify for a herd status upgrade would likely suffer the most severe economic consequences, since they would have to participate in the Federal program (or a newly established State program) for 5 years before they could move their cervids interstate.[9] Under the CWD final rule, these same herd owners would have been able to move their animals interstate after only 1 year in the program. (For these and other herd owners who do not meet the 5-year monitoring requirement, the only alternative under the proposal that would allow for earlier interstate movement would be to sell or otherwise dispose of their existing cervids and replace them with animals from a herd with higher status. However, this alternative would not come without a price; all else being equal, the cost of each replacement cervid is likely to exceed the proceeds from the sale or disposition of each existing animal, given the former's higher status.) It is conceivable that the shift to a 5-year monitoring requirement could effectively force some farmers out of the cervid business, especially those with little or no time in State programs. On the other hand, the change that would allow APHIS to set an enrollment date for herds that is up to 3 years prior to the date APHIS actually processed and approved enrollment should preclude this outcome for most herds.

The adoption of the proposed 5-year monitoring period requirement could also impact prospective new entrants into the cervid farming business, to the extent that it requires them to acquire higher status, and presumably more costly, animals when initially stocking their herds. Under the proposal, for example, new entrants would be eligible to ship their animals interstate immediately only if they stocked their herds with cervids from certified herds. By contrast, the CWD final rule would have allowed new entrants to ship interstate immediately with animals acquired from herds having as low as Second Year status.

Relative to the CWD final rule, the impact on farmers of the proposal to give States the option to ban the entry of certain farmed and captive cervids is uncertain. We propose to allow States that completely prohibit the entry of farmed or captive cervids for reasons which are unrelated to CWD (e.g., for genetic purity or environmental reasons) to continue to do so. We also propose that States may decline to accept cervids from areas in proximity to CWD outbreaks. In both cases, impacts on States that have either type of ban would be nonexistent or minimal. The difference in impacts regarding State bans between this proposal and the final rule may be considered as follows. On the one hand, the CWD final rule would have given farmers with potentially risky animals access to markets in other States that are currently closed to them. On the other hand, there is no assurance, even if the CWD final rule had been in effect, that farmers would have been able to sell a significant number of their high-risk animals in those markets anyway. The market for cervids that are near CWD occurrences is limited, given the animals' added disease risk, and the absence of a ban option in the CWD final rule would not have removed that risk.

Relative to the current situation, the proposal to give States the option to ban the entry of certain cervids would have no impact, since all States have that option now. Currently, several States have elected not to accept cervids if they came from areas in proximity to CWD in the wild.

The proposal to prohibit the program participation of herds established in the future in areas in proximity to CWD occurrences in wild cervids should have little or no impact. There are two reasons. First, the proposal affects newly established herds only, so no current farmers would be affected. Second, it is likely that few, if any, farmers would want to establish a new herd in areas in proximity to CWD in the wild, given the added disease risk and the attendant adverse marketing consequences noted above.

The proposal to define ''proximity'' as within 25 miles (40 km) of a CWD occurrence should benefit herd owners and the States, to the extent that it removes uncertainty that may now exist surrounding the definition of that term. The proposed definition is also consistent with current international practice for importing and exporting elk.

The proposal to require States to conduct monitoring and surveillance for CWD in wild cervids in order to become an approved State CWD program should have little or no impact. This is because such monitoring and surveillance is already being conducted by those States with significant cervid populations, including those without a CWD program.[10]

The proposal to prohibit CWD-positive, -exposed, and -suspect herds that are under State quarantine from adding animals to the herd from outside sources should have little impact, since few herds would be affected. It is estimated that, over the last several years, no more than about two or three cervid herds under quarantine have added animals from outside sources, usually for hunting purposes.

The proposal to modify the herd inventory requirements has the potential to favorably impact herd owners. Under the CWD final rule, herd owners would be required to conduct a physical inventory of assembled and restrained cervids annually. Under this proposed revision to the final rule, a physical inventory would be required at

[9] Herd owners who are not in a State program but who can demonstrate that they have maintained their herds in a manner that would substantially meet the program conditions established by APHIS may qualify for up to 3 years' enrollment credit.

[10] These activities are often conducted by State wildlife agencies, though some involve agriculture agencies, and often receive assistance or technical support from Federal agencies. If Federal assistance or support is reduced or withdrawn altogether in the future, the States would have to bear more or all of the cost of surveillance activities if they wanted to remain an approved State CWD program. At this time, there is no reason to believe that Federal assistance or support will be reduced or withdrawn in the future.

the time a herd is enrolled in a CWD program, and then only on an as-needed basis thereafter to verify compliance with program standards.[11] The proposed rule would still require an annual herd inventory—including a review of owner records and an observation of the herd's unrestrained animals in a viewable, enclosed area—but it would not require that the animals be physically assembled and restrained.

Since herd owners are responsible for all costs incurred in conducting a herd inventory, the proposal has the potential to offer them significant ongoing annual savings. This is because a herd inventory that does not require that the animals be physically assembled and restrained is less costly than one that does. The CWD final rule estimated that for a herd of 50 elk, the annual physical inventory (with the animals assembled and restrained) would cost approximately $1,000, including veterinary fees of approximately $500 and hired labor costs of approximately $500. This cost could be significantly higher in some cases; for example, labor costs for skilled cervid handlers are higher in some areas, and the physical assembly and restraint could cause injury to some cervids, with further costs to the owner for subsequent veterinary care or loss of the animal. By contrast, a ''nonphysical'' herd inventory can be scheduled at a time when it is likely to add only minimally to herd owner operating costs, since most of the activities required for such an inventory are performed from time to time as part of routine herd management.

This proposed change to the herd inventory requirements should also make it possible in many cases to plan the timing of a physical inventory so that it is coordinated with cervid testing for brucellosis and tuberculosis. Such testing occurs for cervid herds participating in the cooperative State-Federal Cervid Brucellosis Program or Cervid Tuberculosis Program. The Uniform Methods and Rules for these programs describe when such herds must be assembled and tested for these diseases. For example, to maintain a herd's Certified status with regard to brucellosis, or its Accredited status with regard to tuberculosis, the herd must be retested for the relevant disease every 21 to 27 months (under current brucellosis and tuberculosis regulations; this timetable may change in the future). We expect that, in many cases, when a cervid herd participates in the CWD program and one or both of the tuberculosis and brucellosis programs, any required physical inventory can be planned so that the requirements for all of the programs can be met during a single animal assembly. The initial and any subsequent physical inventories required for CWD purposes could also be used to conduct testing and any other requirements for the tuberculosis or brucellosis programs.

A very small number of herd owners may benefit from the new confirmatory DNA test provisions for animals that test CWD positive, in cases where a low-cost confirmatory test shows that positive test results were not associated with the correct animal. The number of herd owners who would benefit from the proposal to modify the herd inventory requirements is unknown.

The changes proposed in this document could be expected to have both positive and negative economic consequences for cervid farmers. Potentially, more cervid farmers stand to benefit than not, given that the proposal to modify the herd inventory requirements has the potential to offer significant ongoing annual cost savings to all program participants, but any adverse impact stemming from the proposed shift to a 5-year monitoring period requirement would be temporary and probably affect far fewer farmers.

The proposed rule has no new mandatory reporting, recordkeeping, or other compliance requirements for U.S. entities. Requirements associated with the earlier final rule were discussed in that rule.

The RFA requires agencies to identify, to the extent practicable, any Federal rule that may duplicate, overlap, or conflict with the proposed rule. APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Finally, the RFA requires agencies to describe any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities. We do not have details about the size of the 2,371 elk farms and 4,901 deer farms in the United States. However, it is reasonable to assume that most are small in size, under the U.S. Small Business Administration's (SBA) standards. This assumption is based on composite data for providers of the same and similar services. In 2002, there were 41,238 U.S. farms in NAICS 11299, a classification comprised solely of establishments primarily engaged in raising certain animals (including deer and elk but excluding cattle, hogs and pigs, poultry, sheep and goats, animal aquaculture, apiculture, horses and other equines, and fur-bearing animals). For all 41,238 farms, the per farm average gross receipts in 2002 was $39,868, well below the SBA's small entity threshold of $750,000 for farms in that NAICS category.

Of the proposed changes, the shift to a 5-year monitoring period requirement for interstate movement has the potential to have the most significant adverse impact on both small and large cervid farmers. However, leaving the gradual-escalation monitoring period requirement in place would be unsatisfactory, because the available research suggests that it may not provide an adequate level of protection against the spread of CWD. Most researchers and State CWD programs agree that 5 years is a reasonable upper bound for the incubation period for CWD.

APHIS invites public comment on the rule's expected economic impacts, including any comment on the impact for small entities.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects

9 CFR Part 55

Animal diseases, Cervids, Chronic wasting disease, Deer, Elk, Indemnity payments, Moose.

9 CFR Part 81

Animal diseases, Cervids, Deer, Elk, Moose, Quarantine, Reporting and

[11] APHIS has not yet developed guidelines for determining when a post-initial enrollment physical inventory would be required. The agency plans to do so in the future, after it gains additional experience working with herd inventories. When developed, such guidance will be made available in the CWD program Uniform Methods and Rules or in other program guides.

recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR parts 55 and 81 as previously amended at 71 FR 41682–41707 on July 21, 2006, as follows:

PART 55—CONTROL OF CHRONIC WASTING DISEASE

1. The authority citation for part 55 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 55.1 is amended as follows.

a. By adding a definition for *National Uniform Eartagging System,* in alphabetical order, to read as set forth below.

b. In the definition of *official animal identification*, by adding at the end of paragraph (1) the sentence ''The CWD program allows the use of either the eight-character or nine-character format for cervids.''

c. By revising the definition for *premises identification number (PIN)* to read as set forth below.

§ 55.1 Definitions.

* * * * *

National Uniform Eartagging System. A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight- or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease control programs may specify which format to employ.

* * * * *

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

3. Section 55.22 is amended as follows:

a. In the introductory text of paragraph (a), by adding a sentence following the third sentence to read as set forth below.

b. In paragraph (a)(1)(ii)(B), by removing the words ''2 years prior'' and adding the words ''3 years prior'' in their place.

§ 55.22 Participation and enrollment.

(a) * * * An application for participation may also be denied if APHIS or the State determines that the applicant's herd was established after [*insert effective date of final rule*] on a premises within 25 miles (40 km) of a Federally or State-identified case of CWD in wild deer, elk, or moose, or within 25 miles (40 km) of an area, as defined by APHIS and the State, where CWD has become established in wild deer, elk, or moose. * * *

* * * * *

4. Section 55.23 is amended as follows:

a. By revising paragraph (a)(4) to read as set forth below.

b. By adding a new paragraph (a)(12) to read as set forth below.

c. By revising paragraph (b)(4) to read as set forth below.

§ 55.23 Responsibilities of States and enrolled herd owners.

(a) * * *

(4) Has placed all known CWD-positive, CWD-exposed, and CWD-suspect animals and herds under movement restrictions, with no movement of animals allowed into such herds and with movement of animals from them only for destruction or under permit.

* * * * *

(12) Conducts monitoring and surveillance activities to estimate geographic distribution of CWD in the State.

(b) * * *

(4) The owner must maintain herd records that include a complete inventory of animals that states the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of any animal removed from the herd, and all individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. Upon request by an APHIS employee or State representative, the owner must allow either of these officials or a designated accredited veterinarian access to the premises and herd to conduct an inventory. The owner will be responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection. The APHIS employee or State representative may order either an inventory that consists of review of herd records with visual examination of an enclosed group of animals, or a complete physical herd inventory with verification to reconcile all animals and identifications with the records maintained by the owner. In the latter case the owner must present the entire herd for inspection under conditions where the APHIS employee, State representative, or accredited veterinarian can safely read all identification on the animals. During inventories, the owner must cooperate with the inspector to resolve any discrepancies to the satisfaction of the person performing the inventory. Inventory of a herd will be conducted no more frequently than once per year, unless an APHIS employee, State representative, or accredited veterinarian determines that more frequent inventories are needed based on indications that the herd may not be in compliance with CWD Herd Certification Program requirements.

* * * * *

5. In § 55.24, paragraph (c)(1) is revised to read as follows:

§ 55.24 Herd status.

* * * * *

(c) * * *

(1) Herd owners may appeal designation of an animal as CWD-positive, cancellation of enrollment of a herd, or loss or suspension of herd status by writing to the Administrator within 10 days after being informed of the reasons for the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action. Specifically, to appeal designation of an animal as CWD-positive, the owner may present as evidence the results of a DNA test requested and paid for by the owner to determine whether previous official CWD test results were correctly associated with an animal that belonged to the owner. If the owner intends to present such test results as evidence, he or she shall request the tests and state this in the written notice sent to the Administrator. In such cases the Administrator may postpone a decision on the appeal for a reasonable period pending receipt of such test results. To this end, approved laboratories are authorized to conduct DNA tests to compare tissue samples tested for CWD

to samples from tissues that were collected at the same time by the accredited veterinarian or Federal or State veterinarian and are attached to an official identification device. Such DNA tests are available only if the animal owner arranged to submit animal tissue attached to an official identification device along with the other tissues that were collected for the official CWD test. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If the Administrator grants an appeal of the status of a CWD-positive animal, the animal shall be redesignated as CWD-suspect pending further investigation to establish the final status of the animal and its herd. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

* * * * *

PART 81—CHRONIC WASTING DISEASE IN DEER, ELK, AND MOOSE

6. The authority citation for part 81 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

7. Section 81.1 is amended as follows:

a. By removing the definitions for *CWD-positive animal, CWD-exposed animal,* and *CWD-suspect animal.*

b. By adding a definitions for *National Uniform Eartagging System,* in alphabetical order, to read as set forth below.

c. In the definition of *official animal identification,* by adding at the end of paragraph (1) the sentence ''The CWD program allows the use of either the eight-character or nine-character format for cervids.''

d. By revising the definition of *premises identification number (PIN)* to read as set forth below.

§ 81.1 Definitions.

* * * * *

National Uniform Eartagging System. A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight- or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease control programs may specify which format to employ.

* * * * *

Premises identification number (PIN). A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

8. Section 81.3 is amended as follows:

a. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively.

b. By redesignating the introductory text as paragraph (a) introductory text and adding new paragraphs (a)(1) and (a)(2) to read as set forth below.

c. By revising newly designated paragraph (b) to read as set forth below.

§ 81.3 General restrictions.

(a) No farmed or captive deer, elk, or moose may be moved interstate unless it meets the requirements of this section.

(1) No farmed or captive deer, elk, or moose may be moved interstate from farmed or captive herds where CWD has been diagnosed within the past 5 years or epidemiologically linked to herds where CWD has been diagnosed within the past 5 years.

(2) No farmed or captive deer, elk, or moose may be moved interstate to any State listed on the list of States That Limit Cervid Entry Based on Proximity to CWD Occurrences [1] unless the certificate accompanying the animal states that its premises are at least 25 miles (40 km) from any location where a Federal or State agency identified a case of CWD in wild deer, elk, or moose, and from any area, as defined by APHIS and the State, where CWD has become established in wild deer, elk, or moose. This list is maintained by the Administrator, and a State will be added to or removed from the list after the Administrator receives a written request to do so from the State government, documenting that State law or regulation bans the movement into the State of farmed or captive cervids from herds in proximity to CWD occurrences, or documenting that such a ban in State law or regulation has been repealed.

(b) *Animals in the CWD Herd Certification Program.* The farmed or captive deer, elk, or moose is:

(1) Enrolled in the CWD Herd Certification Program and the herd has achieved Certified status in accordance with § 55.24 of this chapter; and

(2) Is accompanied by a certificate issued in accordance with § 81.4 that identifies its herd of origin and that states that the animal's herd has achieved Certified status and that the animal does not show clinical signs associated with CWD.

* * * * *

9. In § 81.4, paragraph (a) is revised to read as follows:

§ 81.4 Issuance of certificates.

(a) *Information required on certificates.* A certificate must show any official animal identification numbers of each animal to be moved. A certificate must also show the number of animals covered by the certificate; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. The certificate must include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian that the animals were not exhibiting clinical signs associated with CWD at the time of examination and that the animals are from a herd that has achieved Certified status in the CWD Herd Certification Program, and must provide the herd's program status; Except that, certificates issued for animals moved directly to slaughter do not need to state that the animals are from a herd that has achieved Certified status in the CWD Herd Certification Program and must state that an APHIS employee or State representative has been notified in advance of the date the animals are being moved to slaughter. The certificate must also include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian that the animals are not from farmed or captive herds where CWD has been diagnosed within the past 5 years or epidemiologically linked to herds where CWD has been diagnosed within the past 5 years. The certificate must also include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian as to whether or not the animals' premises are within 25 miles (40 km) of a Federally or State-identified case of CWD in wild deer, elk, or moose, or within 25 miles (40 km) of an area, as defined by APHIS and the State,

[1] This list will be maintained on the APHIS Web site at *http://www.aphis.usda.gov.*

where CWD has become established in wild deer, elk or moose.

* * * * *

10. A new § 81.5 is added to read as follows:

§ 81.5 State prohibitions on cervid movement not related to CWD.

State laws and regulations prohibiting the entry of farmed or captive cervids for reasons unrelated to CWD are not preempted by this part.

Done in Washington, DC, this 25th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7026 Filed 3–30–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, 46, and 71

[Docket No. TTB–2009–0001; Notice No. 93; Re: T.D. TTB–75]

RIN 1513–AB70

Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits (2009R–118P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; cross-reference to temporary rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau is issuing a temporary rule implementing certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The text of the regulations in the temporary rule published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2009–0001 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, any comments received, and the related temporary rule at *http://www.regulations.gov.* A direct link to the appropriate Regulations.gov docket is also available under Notice No. 93 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* You also may view copies of these documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: For questions concerning floor stocks tax, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (*FloorStocksTax@ttb.gov,* 513–684–3334 or 1–877–TTB–FAQS (1–877–882–3277)); for other questions concerning this document, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of this issue of the **Federal Register**, we are publishing a temporary rule setting forth regulatory amendments to implement certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The temporary rule amends the existing regulations to reflect increases in the tax rates on tobacco products and cigarette papers and tubes, revising existing floor stocks tax regulations to reflect the scope of the CHIPRA floor stocks tax provisions, and revising existing regulations to include the new statutory criteria for denial, suspension, or revocation of tobacco permits.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the Internal Revenue Code of 1986 provisions relating to qualification of manufacturers of tobacco products and cigarette papers and tubes, importers of those products, and export warehouses for those products. TTB is also responsible for collecting the excise taxes on tobacco products and cigarette papers and tubes removed from domestic production facilities and brought to the United States from Puerto Rico. In addition, TTB is responsible for collecting the floor stocks tax imposed by CHIPRA on tobacco products (except large cigars) and cigarette papers and tubes held for sale on April 1, 2009.

The temporary regulations published elsewhere in this issue of the **Federal Register** involve amendments to parts 40, 41, 44, 46, and 71 of the TTB regulations (27 CFR parts 40, 41, 44, 46, and 71). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

Submitting Comments

You may submit comments on this notice by one of the following three methods:

- *Federal e-Rulemaking Portal:* You may electronically submit comments on this notice through ''Regulations.gov,'' the Federal e-rulemaking portal. A direct link to the Regulations.gov docket containing this notice and its related comment submission form is available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 93. You may also reach this notice and its related comment form via the Regulatons.gov search page at *http://www.regulations.gov.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''
- *Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 93 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not

acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and you may view, copies of this notice, any electronic or mailed comments we receive about this proposal, and the related temporary rule. A direct link to the Regulations.gov docket containing this notice and the comments received on this proposal is available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 93. You may also reach the relevant docket through the Regulatons.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, any electronic or mailed comments we receive about this proposal, and the related temporary rule by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- × 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act, Paper Work Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

Drafting Information

Marjorie Ruhf of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document. However, other personnel participated in its development.

List of Subjects

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 46

Administrative practice and procedure, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 71

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 40, 41, 44, 46, and 71 as follows:

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

1. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. [The proposed amendatory instructions and the proposed amended regulatory text for part 40 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

3. The authority citation for part 41 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

4. [The proposed amendatory instructions and the proposed amended regulatory text for part 41 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

5. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703, 5704, 5708, 5711–13, 5721–5723, 5731, 5741, 5751, 5754, 6066, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

6. [The proposed amendatory instructions and the proposed amended regulatory text for part 44 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

7. The authority citation for Part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

8. [The proposed amendatory instructions and the proposed amended regulatory text for part 46 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

9. The authority citation for part 71 is revised to read as follows:

Authority: 26 U.S.C. 5271, 5181, 5712, 5713, 7805, 27 U.S.C. 204.

10. [The proposed amendatory instructions and the proposed amended regulatory text for part 71 are the same as the amendatory instructions and the amended regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

Signed: March 10, 2009.

John J. Manfreda,

Administrator.

Approved: March 12, 2009.

Timothy E. Skud,

Deputy Assistant Secretary. (Tax, Trade, and Tariff Policy).

[FR Doc. E9–7076 Filed 3–27–09; 11:15 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0159]

RIN 1625–AA00

Safety Zone; Barge BDL235, Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary 100-foot (30.5 meter) radius safety zone around the 142 foot Barge BDL235 while it is performing operations in and around the CHEHALIS wreck. The wreck's approximate position is 14°16.52′ S, 170°40.56′ W and centered about 350 feet north of the fuel dock in Pago Pago Harbor, American Samoa. The safety zone is necessary to protect other vessels and the general public from hazards associated with dive operations.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 15, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0159 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov*.

(2) Fax: 202–493–2251.

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

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

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Commander Marcella Granquist, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808–842–2600. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0159), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, USCG–2009–0159 in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and we may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, USCG–2009–0159 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or at Sector Honolulu, 433 Ala Moana Blvd, Honolulu, Hawaii, 96813 between 7:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 7, 1949 the 4,130-ton gasoline tanker CHEHALIS sank in Pago Pago Inner Harbor, in an estimated 160 feet of water, approximately 350-feet from the fuel dock located near Goat Island Point, Pago Pago, American Samoa. Today, the CHEHALIS wreck remains a potential pollution threat to the environment. The U.S. Coast Guard is scheduled to conduct dive operations to determine and mitigate the wreck's potential pollution threat to the area from April through May 2009.

Discussion of Proposed Rule

This temporary 100-foot (30.5 meter) safety zone would be effective from 6 a.m. April 26, 2009 through 8 p.m. May 14, 2009, (local American Samoa time). If suspension of enforcement occurs earlier than May 14, 2009, notice of termination of the rule will be published in the **Federal Register** and will be announced over marine band VHF channel 16 to ensure ample public notification. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel would be permitted to enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels, aircraft, or persons in violation of this proposed rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this proposed regulation would restrict access to the safety zone, the effect of this rule would not be significant because vessels will be able to transit around the zone. Sector Honolulu COTP will allow vessels in the zone on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities since vessels will be allowed to transit around the 100-foot temporary Safety Zone that will often be centered over the CHEHALIS wreck at approximately 350 feet from the fuel dock in Pago Pago Inner Harbor, American Samoa. However, this rule may affect the following entities, some of which may be small entities: Owners and operators of vessels intending to transit the proposed safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Marcella Granquist, Waterways Management Division, Sector Honolulu, 808–842–2600. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14–184 to read as follows:

§ 165.T14–184 Safety Zone; Barge BDL235, Pago Pago, American Samoa.

(a) *Location.* The following area is a temporary safety zone: All waters 100-foot or 30.5 meter radius around the 142 foot Barge, BDL235 while it is performing dive operations in and around the CHEHALIS wreck. The wreck's approximate position is 14°16.52′ S, 170°40.56′ W and approximately 350 feet north of the fuel dock in Pago Pago Harbor, American Samoa. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Samoa Islands, chart 83484.

(b) *Regulations.* (1) Entry into or remaining in the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu zone, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 1–808–842–2600, the U.S. Coast Guard Marine Safety Detachment American Samoa at telephone number 1–684–633–2299, or on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement period.* This rule will be enforced from 6 a.m. on April 26, 2009 through 8 p.m. on May 14, 2009.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or his or her designated representative.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: March 19, 2009.

B. A. Compagnoni,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. E9–7116 Filed 3–26–09; 4:15 pm]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FMR Case 2009–102–2; Docket 2009–0002, Sequence 2]

RIN 3090–AI87

Federal Management Regulation; FMR Case 2009–102–2; Disposition of Excess Personal Property

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by making a change to its personal property policy. The proposed change will update and clarify language that has caused some confusion with our customers and resulted in unnecessarily prolonged periods to remove property.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501–3828 or e-mail at *robert.holcombe@gsa.gov*. For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755. Please cite FMR case 2009–102–2.

DATES: Interested parties should submit comments in writing on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2009–102–2 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FMR Case 2009–102–2'' under the heading ''Comment or Submission''. Select the

link ''Send a Comment or Submission'' that corresponds with FMR Case 2009–102–2. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FMR Case 2009–102–2'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR Case 2009–102–2 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of the proposed rule is to update and clarify FMR 102–36.135. The current language has caused confusion with our customers and resulted in unnecessarily prolonged removal periods. This revision makes it clear that the acquiring agency is responsible for scheduling and coordinating the property removal once the acquiring agency receives notification from GSA that they have been allocated the property.

B. Executive Order 12866

This proposed rule is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553 (a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–36

Government property, Property disposal.

Dated: February 23, 2009.

Stan Kaczmarczyk,

Acting Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–36 as set forth below:

PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

1. The authority citation for 41 CFR part 102–36 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Revise § 102–36.135 to read as follows:

§ 102–36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

Normally, you have 15 calendar days from the date of GSA allocation to pick up the excess personal property for transfer and you are responsible for scheduling and coordinating the property removal with the holding agency. If additional removal time is required, you are responsible for requesting such additional removal time.

[FR Doc. E9–7152 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–14–P

Notices

Federal Register

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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

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lob and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on April 16 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: April 16, 2009.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lob National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include recommendations on new RAC project proposals, reviewing progress on current projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: March 17, 2009.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. E9–6863 Filed 3–30–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

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

AGENCY: Tahoe National Forest, USDA Forest Service.

ACTION: Notice of Proposed New Fee Site.

SUMMARY: The Tahoe National Forest is proposing to charge a new fee at one developed recreation site. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. The fee listed is only proposed and final determination will be made upon further analysis and public comment. Funds from the fee would be used for the operation and maintenance of this recreation site.

Sardine Lookout will be made available for overnight rental. The rental fee is recommended at $45 per night. Lookout rentals offer a unique experience and are a widely popular offering on National Forests. The Tahoe National Forest currently operates one lookout for public rental, the Calpine Lookout on the Sierraville Ranger District. The Sardine Lookout is in the process of being restored to maintain the lookout's eligibility to the National Register of Historic Places. Fees would continue to help protect and maintain this lookout and the historic integrity of the facility.

DATES: New fees would begin after a six-month publication in the **Federal Register** or August 15, 2009, whichever is sooner. The Sardine Lookout rental will be listed with the National Recreation Reservation Service.

ADDRESSES: Tom Quinn, Forest Supervisor, Tahoe National Forest, 631 Coyote St., Nevada City, California 95959.

FOR FURTHER INFORMATION CONTACT: Michael Baldrica, Sierraville District Archeologist, (530) 994–3401, ext. 6651. Information about proposed fee changes can also be found on the Tahoe National Forest Web site: *http://www.fs.fed.us/r5/tahoe*.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. These new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: February 9, 2009.

Tom Quinn,

Forest Supervisor.

[FR Doc. E9–6769 Filed 3–30–09; 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: International Trade Administration (ITA).

Title: Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program.

Form Number(s): ITA–340P, ITA–360P, ITA–361P.

OMB Control Number: 0625–0134.

Type of Request: Regular submission (extension without change).

Burden Hours: 9 hours and 28 minutes.

Number of Respondents: 10.

Average Hours Per Response: 6 minutes for Form ITA–340P; 1 minute for Form ITA–360P; and 10 minutes for Form ITA–361P.

Needs and Uses: Public Law 97–446, as amended, requires the Department of Commerce and Department of the Interior to administer the distribution of watch duty exemptions and watch and jewelry duty refunds to program producers in the U.S. insular possessions (American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands). Form ITA–340P provides the data to assist in the verification of duty-free shipments and make certain the allocations are not exceeded. Form ITA–360P and ITA–361P are necessary to implement the duty refund program. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that

necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–7285 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7094 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: International Trade Administration (ITA).

Title: Client Satisfaction Surveys.

OMB Control Number: 0625–0217.

Form Number(s): ITA–4107.

Type of Request: Regular submission (Revision).

Burden Hours: 879.

Number of Respondents: 10,150.

Average Hours per Response: 5 minutes.

Needs and Uses: Expanding U.S. exports is a national priority essential to improving U.S. trade performance. The Department of Commerce's International Trade Administration including Market Access and Compliance (MAC) and the U.S. Commercial Service (CS) are key U.S. government agencies responsible for assisting U.S. companies to export and/or conduct business overseas. The CS provides export promotion services such as market research, client counseling and trade missions. MACs Trade Agreements Compliance (TAC) Center assists clients with resolving market access barriers.

To accomplish its mission effectively and efficiently ITA requires ongoing client feedback on its programs. The feedback is used to improve its services to better meet clients' needs and to ensure that clients are provided with effective and appropriate export services.

Currently, the clients have the opportunity to provide feedback via an electronic link to a comment card at the completion of each pay-for-use service, trade promotion event and advocacy case. The CS would also like to provide clients with the opportunity to submit feedback at any time by clicking on a comment card link at the bottom of its staffs' e-mail messages (taglines).

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy L. Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7156 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 4 of the 2008 Panel

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 1, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as ''topical modules.''

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, 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 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 45,000 households are expected to be interviewed. We estimate that each household contains 2.1 people, yielding 94,500 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2009. The total annual burden for 2008 Panel SIPP interviews would be 141,750 hours in FY 2009.

The topical modules for the 2008 Panel Wave 4 collect information about:

- Assets, Liabilities, and Eligibility.
- Child Well-Being.
- Medical Expenses and Utilization of Health Care (Adults and Children).
- Work Related Expenses and Child Support Paid.

Wave 4 interviews will be conducted from September 1, 2009 through December 31, 2009.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,553 burden hours in FY 2009.

II. Method of Collection

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 one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 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 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 individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 94,500 people per wave.

Estimated Time per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 143,303.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

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

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: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7117 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–935

Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: March 31, 2009.

SUMMARY: The Department of Commerce (Department) has determined that circular welded carbon quality steel line pipe (welded line pipe) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below. The period covered by the investigation is October 1, 2007, through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–2769 and 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its preliminary determination of sales at LTFV on November 6, 2008. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 66012 (November 6, 2008) (*Preliminary Determination*). On November 5, 2008, Shanghai Metals & Minerals Import & Export Corp. d/b/a Shanghai Minmetals Materials & Products Corp. (Shanghai Metals) informed the Department that it would not participate in the verification of its information and withdrew from the investigation. *See* Letter to Secretary of Commerce, Shanghai Metals' Notice of Withdrawal from Investigation and Certification of APO Compliance and Destruction of APO Materials at 1 (November 5, 2008). On November 6, 2008, Benxi Northern Steel Pipes Co., Ltd. (Benxi) also informed the Department that it would not participate in the verification of its information and withdrew from the investigation. *See* Letter to Secretary of Commerce, Benxi's Notice of Withdrawal from Investigation (November 6, 2008). From November 13, 2008, through November 21, 2008, the Department conducted a verification of information submitted by Huludao Steel Pipe Industrial Co., Ltd. (Huludao Pipe). *See* the ''Verification'' section below for additional information. On December 16, 2008, Huludao Pipe and United States Steel Corporation (U.S. Steel), one of the petitioning companies, submitted comments on, and calculations of, various surrogate values. In response to the Department's invitation to comment on the *Preliminary Determination*, on January 5, 2009, U.S. Steel, Maverick Tube Corporation (Maverick), a petitioner, Huludao Pipe, and the Bureau of Fair Trade, Imports and Exports, Ministry of Commerce of the PRC filed case briefs.

Maverick, U.S. Steel and Huludao Pipe filed rebuttal briefs on January 12, 2009.

Analysis of Comments Received

All of the issues that were raised in the case and rebuttal briefs that were submitted in this investigation, and to which we have responded, are addressed in the ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China,'' dated March 23, 2009, which is hereby adopted by this notice (Issues and Decision Memorandum). Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit, at the 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.

Changes Since the Preliminary Determination

We have made the following changes to our calculations in the Preliminary Determination:

1. We based our determination with respect to Shanghai Metals and Benxi on total adverse facts available (AFA) because these companies refused to allow the Department to verify the information submitted in the investigation and failed to cooperate to the best of their abilities. As total AFA, we found Shanghai Metals and Benxi to be part of the PRC–wide entity.
2. We have reduced the grace period used in calculating warehouse expenses to seven days.
3. We have applied new surrogate values for ocean freight based on corrections to the departure and destination ports made at verification.
4. We have recalculated the reported per–unit volume of subject merchandise warehoused based on verification findings.
5. We have recalculated the cost of paint and thinner based on corrections to consumption reported by Huludao Pipe at verification.
6. We have recalculated labor costs based on corrections to consumption reported by Huludao Pipe at verification.
7. We have recalculated transportation costs for material inputs based on corrections to the distance from the supplier to the factory reported by Huludao Pipe at verification.
8. We have used new surrogate financial statements to calculate financial ratios.

Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term ''carbon quality'' includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non–graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple–stenciled pipe with an API welded line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple–stenciled to a standard and/or structural specification and have one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term ''painted'' does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The welded line pipe products that are the subject of this investigation are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Since the *Preliminary Determination* no one has submitted comments on the scope of this investigation.

Adverse Facts Available

As noted in the ''Background'' section above, Shanghai Metals and Benxi withdrew from the investigation and refused to allow the Department to verify the information they had submitted in this proceeding.

Section 776(a)(2) of the Act provides that, if an interested party (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information.

Therefore, pursuant to sections 776(a)(2)(C) and (D) and 776(b) of the Act, we have, decided to base Shanghai Metals and Benxi's dumping margins on AFA. As AFA, we have treated Shanghai Metals and Benxi as part of the PRC–wide entity and assigned Shanghai Metals and Benxi the PRC–wide rate of 101.10 percent. *See* Issues and Decision Memorandum at Comment 12.

Verification

As provided in section 782(i) of the Act, we conducted verification in the PRC of the information submitted by Huludao Pipe for use in our final determination. *See* the Memorandum from Jeff Pedersen and Rebecca Pandolph, through Howard Smith, to the file regarding Verification of the Questionnaire Responses of Huludao Pipe Steel Pipe Industrial Co., Ltd. (December 11, 2008). In conducting the

verification, we used standard verification procedures, including examination of relevant accounting, sales, and production records, as well as original source documents provided by Huludao Pipe.

Surrogate Country

In the *Preliminary Determination*, we selected India as the appropriate surrogate country noting that India was on the Department's list of countries that are at a level of economic development comparable to the PRC and that: (1) India is a significant producer of merchandise comparable to the subject merchandise; and, (2) reliable Indian data for valuing factors of production are readily available. *See Preliminary Determination*, 73 FR at 66014. No party has commented on our selection of India as the appropriate surrogate country. For the final determination, we continue to find India to be the appropriate surrogate country in this investigation.

Separate Rates

In proceedings involving non–market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by N*otice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994); *see also* 19 CFR 351.107(d).

In the *Preliminary Determination*, the Department granted separate–rate status to Benxi; Huludao Pipe; Pangang Group Beihai Pipe Corporation (Pangang Beihai); Shanghai Metals; Tianjin Xingyuda Import and Export Company (Tianjin); and Jiangsu Yulong Steel Pipe Co., Ltd. (Jiangsu Yulong). As discussed above, the Department has decided, as AFA, to treat Shanghai Metals and Benxi as part of the PRC–wide entity. Moreover, we note that the information that Shanghai Metals and Benxi provided to the Department to demonstrate the absence of *de facto* and *de jure* control could not be verified due to their failure to cooperate. Consequently we have not granted Shanghai Metals and Benxi separate rates.

While U.S. Steel argued in its case brief that Pangang Beihai should not be granted a separate rate, we continue to find that Pangang Beihai qualifies for a separate rate. *See* Issues and Decision Memorandum at Comment 11. No other parties commented on the separate–rate status granted to companies in the *Preliminary Determination*. For this final determination we have continued to grant the following companies separate–rate status: Huludao Pipe, Pangang Beihai, Tianjin, and Jiangsu Yulong. We have assigned the separate–rate companies the dumping margin that we calculated for Huludao Pipe.

The PRC–Wide Rate

In the Preliminary Determination, the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination*, 73 FR at 66016. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Moreover, for the reasons noted above, we also consider Shanghai Metals and Benxi to be part of the PRC–wide entity.

As noted above, section 776(a)(2) of the Act provides that, if an interested party or any other person withholds information that has been requested by the administering authority, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because the PRC–wide entity did not respond to our requests for information and because companies within the PRC–wide entity withheld information requested by the Department, and Shanghai Metals and Benxi, which are part of the PRC–wide entity, did not allow their information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination*, that the use of facts otherwise available is appropriate to determine the PRC–wide rate.

As stated above, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994), at 870. We determine that, because the PRC–wide entity did not respond to our requests for information, and Shanghai Metals and Benxi prevented the Department from verifying its information, the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting a dumping margin from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

In this final determination, we have assigned the PRC–wide entity the highest CONNUM–specific dumping margin, *i.e.*, 101.10 percent, calculated for Shanghai Metals. *See* Issues and Decision Memorandum at Comment 10. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.

Since we begin with the presumption that all companies within an NME country are subject to government control, and only the exporters listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC–wide rate) to all exporters of subject merchandise from the PRC, other than the exporters listed in the ''Final Determination Margins'' sections. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Certain Circular Welded Carbon Quality Steel Line Pipe From the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 23188 (April 29, 2008) (Initiation Notice). This change in practice is described in *Policy Bulletin 05.1:*

> §w§hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its

NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.''

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries'' available on the Import Administration's website at http://ia.ita.doc.gov/policy/index.html.

Final Determination Margins

We determine that the following weighted–average dumping margins exist for the period October 1, 2007, through March 31, 2008:

Exporter & Producer	Weighted–Average Margin
Huludao Steel Pipe Industrial Co., Ltd..	
Huludao City Steel Pipe Industrial Co., Ltd.	73.87%
Produced by: Huludao Steel Pipe Industrial Co., Ltd..	
Huludao City Steel Pipe Industrial Co., Ltd..	
Pangang Group Beihai Steel Pipe Corporation	73.87%
Produced by: Pangang Group Beihai Steel Pipe Corporation.	
Jiangsu Yulong Steel Pipe Co., Ltd.	73.87%
Produced by: Jiangsu Yulong Steel Pipe Co., Ltd..	
Tianjin Xingyuda Import and Export Co., Ltd.	73.87%
Produced by: Tianjin Lifengyuanda Steel Pipe Group Co., Ltd..	
PRC–Wide Rate	101.10%

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). The Department has determined in *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 FR 4136 (January 23, 2009) (*Line Pipe CVD Final*) that the product under investigation, exported and produced by Huludao Pipe, benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct U.S. Customs and Border Protection (CBP) to require an antidumping cash deposit or posting of a bond equal to the weighted–average amount by which the normal value (NV) exceeds the export price, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2004). Therefore, for merchandise under consideration, exported and produced by Huludao Pipe, and entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above, reduced by the export subsidy rate determined in the *Line Pipe CVD Final* for Huludao Pipe. For merchandise under consideration from the other exporter producer combinations, listed in the table above, that have been granted separate rates, we have assigned the rate calculated for Huludao Pipe in this antidumping investigation. Additionally, this merchandise is subject to countervailing duties to offset export subsidies equal to or greater than the export subsidy rate determined for Huludao Pipe. Therefore, for merchandise under consideration from these exporter producer combinations, entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above, reduced by the export subsidy rate determined for Huludao Pipe in the *Line Pipe CVD Final*. The adjusted cash deposit rate for Huludao Pipe and the other exporter–producer combinations listed above is 73.44 percent.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all imports of subject merchandise as described in the ''Scope of the Investigation'' section, that are entered or withdrawn from warehouse, for consumption on or after November 6, 2008, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) the rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) 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 exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is

materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess upon further instruction by the Department antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 23, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Parties' Comments

Comment 1: Whether Huludao Pipe Could Have Reported Steel Consumption on a More Product–Specific Basis
Comment 2: Whether Huludao Pipe Could Have Reported the Consumption of Paint, Thinner, and Packing Labor on a More Product–Specific Basis
Comment 3: The Department's Valuation of Huludao Pipe's Water Consumption
Comment 4: Huludao Pipe's Reported Steel By–Product Quantity
Comment 5: Whether Huludao Pipe's Reported Scrap Steel Offset Should be Reduced by Transportation Costs
Comment 6: Application of Warehousing Grace Period
Comment 7: Reported Days in Warehouse
Comment 8: Calculation of Warehousing Volume
Comment 9: Whether the Date of the Commercial Invoice Is the Proper Date of Sale
Comment 10: Scrap Surrogate Value
Comment 11: Eligibility of Pangang Group Beihai Steel Pipe Corporation for a Separate Rate
Comment 12: Applying Adverse Facts Available to Non–Responsive Companies
Comment 13: Selection of Surrogate Financial Statements
Comment 14: Whether the Imposition of Both Countervailing and Antidumping Duties Constitutes the Double Counting of Duties

[FR Doc. E9–7093 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Childrens Hospital, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 09–001. Applicant: Childrens Hospital, Los Angeles, CA 90027. Instrument: Transmission Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 74 FR 8503, February 25, 2009.

Docket Number: 09–002. Applicant: U.S. Environmental Protection Agency, Denver, CO 80202. Instrument: Transmission Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 74 FR 8503, February 25, 2009.

Docket Number: 09–003. Applicant: U.S. Food and Drug Administration, Laurel, MD 20708. Instrument: Transmission Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 74 FR 8503, February 25, 2009.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: March 23, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–7222 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–931]

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Correction to Countervailing Duty Order

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

DATES: *Effective Date:* March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4014, Washington, DC 20230; telephone: (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Correction

On March 19, 2009, the Department of Commerce (''the Department'') published a notice of countervailing duty order on circular welded austenitic stainless pressure pipe from the People's Republic of China (''PRC''). *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Countervailing Duty Order,* 74 FR 11712 (March 19, 2009) (''*CVD Order*''). Subsequent to the publication of the *CVD Order* in the **Federal Register**, we identified an inadvertent error.

The notice states that on March 11, 2009, the United States International Trade Commission (ITC) notified the Department of its final affirmative determination of material injury. This is a typographical error. The Department received the ITC's notification of its final affirmative determination of material injury on March 12, 2009.

This notice is published in accordance with sections 777(i) and 706(a) of the Tariff Act of 1930, as amended.

Dated: March 24, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7230 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On September 22, 2008, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy, covering the period August 1, 2006, through July 31, 2007. We invited interested parties to comment on these preliminary results. Based on our analysis of the comments received and the results of verification, we have made changes to the margin calculation. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair or Nancy Decker, at (202) 482–3813 or (202) 482–0196, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2008, the Department of Commerce (''Department'') published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene (''PTFE'') resin from Italy. *See Amended Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 73 FR 54557 (September 22, 2008) (''*Preliminary Results*'').

From October 13 through October 17, 2008, we verified Solvay Solexis S.p.A.'s sales response. We issued a report for this verification on December 11, 2008. *See* Memorandum from Shane Subler and Alicia Winston, International Trade Compliance Analysts, to Susan H. Kuhbach, Director, Office 1, ''Verification of the Sales Response of Solvay Solexis S.p.A. in the Antidumping Duty Administrative Review of Granular Polytetrafluoroethylene Resin from Italy,'' (December 11, 2008) (''Home Market Verification Report''). From November 13 through November 19, 2008, we verified Solvay Solexis S.p.A.'s cost response. We issued a report for this verification on January 6, 2009. *See* Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, ''Verification of the Cost of Production and Constructed Value Data Submitted by Solvay Solexis S.p.A. in the Antidumping Duty Administrative Review of Granular Polytetrafluoroethylene (''PTFE'') Resin from Italy,'' (January 6, 2009) (''Cost Verification Report''). On October 27 and 28, 2008, we verified Solvay Solexis, Incorporated's constructed export price (''CEP'') sales response. *See* Memorandum from Shane Subler and Alicia Winston, International Trade Compliance Analysts, to Susan H. Kuhbach, Director, Office 1, ''Verification of the Sales Response of Solvay Solexis, Inc. in the Antidumping Duty Administrative Review of Granular Polytetrafluoroethylene Resin from Italy,'' (January 9, 2009) (''CEP Verification Report''). In this notice, we refer to the three reports collectively as the ''Verification Reports.''

We invited parties to comment on the *Preliminary Results*. On January 26, 2009, we received case briefs from E.I. DuPont de Nemours & Company (''the petitioner'') and Solvay Solexis, Inc. and Solvay Solexis S.p.A. (collectively, ''Solvay''). On January 29, 2009, we received rebuttal briefs from the petitioner and Solvay. On January 26, 2009, Solvay requested a public hearing; the hearing was held at the Department of Commerce on February 2, 2009. A record of the February 2, 2009, hearing is available in the Central Records Unit (''CRU''), Room 1117 of the main Department building.

On January 9, 2009, we extended the time limit for the final results of this administrative review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Granular Polytetrafluoroethylene Resin From Italy: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 74 FR 885 (January 9, 2009).

Scope of the Order

The product covered by the order is granular PTFE resin, filled or unfilled. The order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 26100 (April 30, 1993). The order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). We are providing this HTSUS number for convenience and U.S. Customs and Border Protection (''CBP'') purposes only. The written description of the scope remains dispositive.

Cost of Production

Consistent with the *Preliminary Results*, we disregarded home–market sales by Solvay that failed the cost–of-production test.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from John M. Andersen, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated March 23, 2009, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the CRU, Room 1117 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Import Administration website at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

First, we revised the calculations from the *Preliminary Results* to account for minor corrections that Solvay submitted during the home market and CEP sales verifications. We revised the following fields in Solvay's home market sales database: packing and indirect selling expenses. We revised the following fields in Solvay's U.S. market sales

database: U.S. inland freight from the warehouse to the customer, indirect selling expenses incurred in the United States, U.S. warehousing, U.S. brokerage, and packing. For details on the minor corrections, see page 2 and Exhibit 1 of the Home Market Verification Report; *see also* page 2 and Exhibits 1a–1d of the CEP Verification Report.

Second, we made additional changes to the *Preliminary Results* calculations to account for other findings from the sales verifications. First, we removed two sales to Canada from Solvay's U.S. sales database. *See* page 2 of the CEP Verification Report. Second, we found that Solvay used interest rates on loans from affiliated companies to calculate imputed credit and inventory carrying expenses for home market sales and U.S. market sales. *See* page 2 of the Home Market Verification Report; *see also* page 2 of the CEP Verification Report. Instead, we used interest rates published by the Bank of Italy for loans to non–financial corporations as an interest rate for the home market rather than Solvay's rate from affiliated companies. For the U.S. market, we used short–term interest rates published by the Federal Reserve for commercial and industrial loans as a surrogate interest rate. For both markets, we used a single weighted–average of the monthly interest rates that correspond to the period of review (''POR'').

Third, based on our analysis of comments from interested parties, we made the following changes to the cost of production calculation. First, we used Solvay's fiscal year 2007 financial statements to calculate general and administrative expenses (''G&A'') and financial expenses. Second, we calculated the short–term portion of Solvay's total interest income based on the ratio of current assets to the total interest income–producing assets of the parent company, Solvay S.A. We have addressed these two issues in the public decision memorandum that accompanies this notice. Finally, we made additional revisions to the calculation of G&A expenses and the total cost of manufacturing. Comments from parties on these issues contain business proprietary information, so we have addressed the comments in the Memorandum to the File from Ernest Gziryan to Neal M. Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results Solvay–Solexis S.p.A.,'' (March 23, 2009).

We have explained the incorporation of all of the changes into the calculation programs in the Memorandum to the File from Yasmin Nair, ''Final Results Calculation Memorandum for Solvay Solexis, Inc. and Solvay Solexis S.p.A. for the Nineteenth Administrative Review of Granular Polytetrafluoroethylene Resin From Italy,'' (March 23, 2009).

Final Results of Review

As a result of our review, we determine that the following percentage weighted–average margin exists for the period August 1, 2006, through July 31, 2007:

Producer	Weighted–Average Margin (Percentage)
Solvay Solexis, Inc. and Solvay Solexis S.p.A. (collectively, ''Solvay'')	79.47

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, and the respondent has reported reliable entered values, we applied the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis* and we did not have reliable entered values, we calculated a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see id.*

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of PTFE from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for Solvay will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Italy*, 53 FR 26096 (July 11, 1988). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice is also the reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: March 23, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Decision Memorandum

Comment 1: Differences Between Statutory Financial Statements and Financial Statements Prepared According to International Financial Reporting Standards

Comment 2: Financial Statements for G&A and Financial Expenses

Comment 3: Goodwill Amortization

Comment 4: Research and Development Expenses and Certain G&A Expenses

Comment 5: Major Inputs

Comment 6: Adjustments to the Cost of Manufacturing

Comment 7: Financial Expenses

Comment 8: Solvay's Use of Polymist® in Producing In–Scope Products

Comment 9: Non–U.S. Sales

Comment 10: Treatment of Negative Dumping Margins (Zeroing)

[FR Doc. E9–7232 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

DATES: *Effective Date:* March 31, 2009.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between October 1, 2008, and December 31, 2008. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of December 31, 2008. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–2312.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent notification of scope rulings was published on December 1, 2008. *See Notice of Scope Rulings*, 73 FR 72771 (December 1, 2008). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between October 1, 2008, and December 31, 2008, inclusive, and it also lists any scope or anticircumvention inquiries pending as of December 31, 2008. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between October 1, 2008, and December 31, 2008

Germany

A–428–825: Stainless Steel Sheet and Strip in Coils from Germany. Requestor: Almetals, Inc.; TriClad nickel-clad stainless steel sheet and strip in coils is within the scope of the antidumping duty order; October 10, 2008.

Japan

A–588–046: Polychloroprene Rubber from Japan. Requestor: DuPont Performance Elastomers L.L.C.; solid polychloroprenes that are dipolymers of chloroprene and methacrylic acid having methacrylic acid comonomer content in the 0.2 percent to 5.0 percent range (this category does not include aqueous chloroprene/methacrylic acid dipolymer dispersion products or solvent solutions of chloroprene/methacrylic acid dipolymers) are excluded from the scope of the antidumping duty order; October 31, 2008.

A–588–046: Polychloroprene Rubber from Japan. Requestor: DuPont Performance Elastomers L.L.C; aqueous dispersions of 2-chlorobutadiene-1,3 homopolymers, where the polymer content of the dispersion is between 55 weight percent and 61 weight percent and the dispersed homopolymer contains less than 10 weight percent of a tetrahydrofuran-insoluble fraction are excluded from the scope of the antidumping duty order; December 12, 2008.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China. Requestor: Sourcing International, LLC; Red Rose Stem (HM65975W–G); White and Yellow Poppies (HM65895R); Water Lotus (HM52305LB); Spotted Orchid (HM12066); and Bouquet of Pom Pom (HM65833W–G) novelty candles are not within the scope of the antidumping duty order; October 20, 2008.

A–570–827: Cased Pencils from the People's Republic of China. Requestor: Walgreen Co.; the ''ArtSkills Stencil Kit'' is not within the scope of the antidumping duty order; October 8, 2008.

A–570–882: Refined Brown Aluminum Oxide from the People's Republic of China. Requestor: 3M Company; semi-friable aluminum oxide and heat-treated aluminum oxide are within the scope of the antidumping duty order; October 1, 2008.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China. Requestor: Rayton Produce Packaging Inc.; promotional bag (model # F–OPPAPEJZLG) is within the scope of the antidumping duty order; October 2, 2008.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China. Requestor: Majestic International; certain polyethylene gift bags (UPC codes starting with 8–51603- and ending with: 00002–3, 00004–7, 00140–2, 00141–9, 00142–6, 00041–2, 00040–5, 00052–8, 00059–7, 00066–5, 00068–9, 00071–9, 00072–6, 00075–7, 00076–4, 00092–4, 00093–1, 00094–8, 00098–6, 00131–0, 00132–7, 00133–4, 00144–0, 00145–7, 00152–5, 00153–2, 00155–6, 00156–3, 00160–0, 00163–1, 00165–5, 00166–2, 00175–4, 00176–1, 00181–5, 00183–9, 00226–3, 00230–0, 00231–7, 00246–1, 00251–5, 00252–2,

00253–9, 00254–6, 00255–3, 00256–0, 00257–7, 00259–1, 00260–7, 00262–1, 00263–8, 00300–0, 00301–7, 00302–4, 00303–1, 00305–5, 00306–2, 00307–9, 00308–6, 00309–3, 00350–5, 00351–2, 00352–9, 00353–6, 00354–3, 00355–0, 00356–7, 00357–4, 00358–1) are not within the scope of the antidumping duty order; November 19, 2008.

A–570–890 Wooden Bedroom Furniture from the People's Republic of China. Requestor: Stanley Furniture Company, Inc.; its convertible cribs are not within the scope of the antidumping duty order; December 23, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Central Purchasing, LLC.; its welding cart (model number 65939), is not within the scope of the antidumping duty order; October 1, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Reisenthel Accessories; Carrycruiser shopping cart is not within the scope of the antidumping duty order; October 15, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Ardisam, Inc.; Yukon Tracks Sportsman's Cart (model number AV125) is not within the scope of the antidumping duty order; October 16, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Conair Corporation; LadderKart, a hand truck with an integral folding step-ladder, is within the scope of the antidumping duty order; October 20, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: American Lawn Mower Company; Collect-It Garden Waste Remover is not within the scope of the antidumping duty order; November 10, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Eastman Outdoors, Inc.; Versa deer cart (model #9930) is not within the scope of the antidumping duty order; December 31, 2008.

A–570–922 and C–570–923: Raw Flexible Magnets from the People's Republic of China. Requestor: Target Corporation; certain decorative retail magnets (for model numbers starting with DPCI05319- and ending with: 2052 and 2058) are not within the scope of the antidumping and countervailing duty orders; certain decorative retail magnets (for model numbers starting with DPCI05319- and ending with: 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, and model number DPCI053230152) are within the scope of the antidumping and countervailing duty orders; December 22, 2008.

Multiple Countries

A–423–808 and C–423–809: Stainless Steel Plate in Coils from Belgium; A–475–822: Stainless Steel Plate in Coils from Italy; A–580–831: Stainless Steel Plate in Coils from South Korea; A–583–830: Stainless Steel Plate in Coils from Taiwan; A–791–805 and C–791–806: Stainless Steel Plate in Coils from South Africa. Requestor: Ugine & ALZ Belgium N.V.; stainless steel products with an actual thickness of less than 4.75 mm, regardless of nominal thickness, are within the scope of the antidumping and countervailing duty orders; December 3, 2008.

Anticircumvention Determinations Completed Between October 1, 2008, and December 31, 2008

None.

Scope Inquiries Terminated Between October 1, 2008, and December 31, 2008

None.

Anticircumvention Inquiries Terminated Between October 1, 2008, and December 31, 2008

None.

Scope Inquiries Pending as of December 31, 2008

People's Republic of China

A–570–806: Silicon Metal from the People's Republic of China. Requestor: Globe Metallurgical Inc.; whether certain silicon metal exported by Ferro-Alliages et Mineraux to the United States from Canada is within scope of the antidumping duty order; requested October 1, 2008.

A–570–827: Cased Pencils from the People's Republic of China. Requestor: Walgreen Co.; whether the ''ArtSkills Draw & Sketch Kit'' is within the scope of the antidumping duty order; requested May 29, 2007; initiated March 21, 2008.

A–570–827: Cased Pencils from the People's Republic of China. Requestor: Paper Magic Group (''PMG''); whether PMG's children's Valentine card sets with pencils are within the scope of the antidumping duty order; requested October 6, 2008; initiated November 20, 2008.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China. Requestor: ESM Group Inc.; whether atomized ingots are within the scope of the antidumping duty order; original scope ruling rescinded and vacated April 18, 2007; [1] initiated April 18, 2007; preliminary ruling issued August 27, 2008.

A–570–866: Folding Gift Boxes from the People's Republic of China. Requestor: Footstar; whether certain four boxes for business cards and forms (length × width: 5 × 3.5; 7 × 3.5; 12.125 × 3.5; and 11 × 8.5) are within the scope of the antidumping duty order; requested April 26, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China. Requestor: Hallmark Cards, Inc.; whether its ''FunZip'' gift presentation is within the scope of the antidumping duty order; requested June 1, 2007.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China. Requestor: New Tec Integration Co., Ltd.; whether New Tec's chair using two U-shaped steel tubes to form the front and rear legs, and not utilizing the cross-bracing typically affixed to the leg frame by rivets, welds, and fasteners, is within the scope of the antidumping duty order; requested July 30, 2008; initiated September 24, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Armel Enterprises, Inc.; whether certain children's playroom and accent furniture are within the scope of the antidumping duty order; requested September 24, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Target Corporation; whether the Shabby Chic secretary desk and mirror are within the scope of the antidumping duty order; requested November 30, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Zinus, Inc. and Zinus (Xiamen) Inc.; whether its Smartbox mattress support and box spring are within the scope of the antidumping duty order; requested January 22, 2008.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China. Requestor: Acme Furniture Industry, Inc.; whether its mattress supports (item nos. 2833, 2834, 2835, 2836 and 2837) are within the scope of the antidumping duty order; requested February 26, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Northern Tool & Equipment Co.; whether a high-axle torch cart (item #164771) is within the scope of the antidumping duty order; requested March 27, 2007.

[1] *See Notice of Scope Rulings*, 72 FR 43245, 43246 (August 3, 2007).

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Corporate Express Inc.; whether its luggage carts, model numbers CEB31210 and CEB31490, are within the scope of the antidumping duty order; requested January 31, 2008.

A–570–891: Hand Trucks from the People's Republic of China. Requestor: Safco Products Co.; whether its StowAway Cart (Model 4062) and Stow And Go Cart (Model 4049) are within the scope of the antidumping duty order; requested October 16, 2008; initiated November 28, 2008.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China. Requestor: BioLab, Inc.; whether chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Vietnam before entering the U.S., are within the scope of the antidumping duty order; requested August 15, 2007; initiated March 21, 2008.

A–570–899: Artist Canvas from the People's Republic of China. Requestor: C2F, Inc.; whether framed artist canvas in two forms (*i.e.*, 65% polyester, 35% cotton bulk or 100% cotton bulk) woven in the Republic of Korea and cut and framed in the People's Republic of China are within the scope of the antidumping duty order; requested September 4, 2008.

A–570–899: Artist Canvas from the People's Republic of China. Requestor: Art Supplies Enterprises, Inc.; whether framed artist canvas woven and primed in Vietnam and cut and framed in the People's Republic of China is within the scope of the antidumping duty order; requested December 22, 2008.

A–570–901: Lined Paper Products from the People's Republic of China. Requestor: Lakeshore Learning Materials; whether certain printed educational materials, product numbers RR973 and RR974 (Reader's Book Log); GG185 and GG186 (Reader's Response Notebook); GG181 and GG182 (The Writer's Notebook); RR673 and RR674 (My Word Journal); AA185 and AA186 (Mi Diario de Palabras); RR630 and RR631 (Draw & Write Journal); AA786 and AA787 (My First Draw & Write Journal); AA181 and AA182 (My Picture Word Journal); GG324 and GG325 (Writing Prompts Journal); EE441 and EE442 (Daily Math Practice Journal Grades 1–3); EE443 and EE444 (Daily Math Practice Journal Grades 4–6); EE651 and EE652 (Daily Language Practice, Grades 1–3); EE653 and EE654 (Daily Language Practice Journal, Grades 4–6), are within the scope of the antidumping duty order; requested December 7, 2006; initiated May 7, 2007.

A–570–901: Lined Paper Products from the People's Republic of China. Requestor: Livescribe Inc., whether the patented dot-patterned paper (trademarked ''ANOTO'') is within the scope of the antidumping duty order; requested October 24, 2008.

A–570–901: Lined Paper Products from the People's Republic of China. Requestor: PlanAhead LLC; whether writing cases, writing portfolios, portfolios and padfolios, 70314 Professional Padfolio; 70689 Contour Padfolio; 72055 Urban Padfolio; 72537 Fashion Padfolio, are within the scope of the antidumping duty order; requested November 17, 2008.

A–570–904: Certain Activated Carbon from the People's Republic of China. Requestor: Rolf C Hagen (USA) Corp; whether certain fish filter parts are within the scope of the antidumping duty order; requested November 14, 2008.

A–570–909: Certain Steel Nails from the People's Republic of China. Requestor: Shanghai March Import & Export Co., Ltd.; whether the horseshoe nails imported by Shanghai March Import & Export Co., Ltd. are within the scope of the antidumping duty order; requested October 17, 2008.

A–570–916 and C–570–917: Laminated Woven Sacks from the People's Republic of China. Requestor: Archer Daniels Midland Company; whether Products A and Product B described as: (1) Made of a single ply of woven polypropylene strip; (2) laminated with biaxially-oriented polypropylene (''BOPP''); (3) printed in three colors; and (4) of less than one kilogram in weight are within the scope of the antidumping duty order; whether Products C, D and F described as each having no lamination or coating of BOPP; and whether Product E described as: (1) Made of a single ply of woven polypropylene strip; (2) laminated with BOPP; (3) printed in two colors; and (4) less than one kilogram in weight are within the scope of the antidumping duty order; requested October 24, 2008.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China. Requestor: Econoco Corporation; whether chrome-plated hangers with a certain diameter are within the scope of the antidumping duty order; requested December 3, 2008.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China. Requestor: American Hanger; whether chrome-plated hangers with a certain diameter are within the scope of the antidumping duty order; requested December 1, 2008.

A–570–922 and C–570–923: Raw Flexible Magnets from the People's Republic of China. Requestor: Target Corporation; whether certain decorative retail magnets (for model numbers starting with DPCI05319- and ending with: 2052, 2058, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079; and model number DPCI053230152) are within the scope of the antidumping duty order; requested September 9, 2008.

Anticircumvention Rulings Pending as of December 31, 2008

People's Republic of China

A–570–849: Cut-to-Length Carbon Steel Plate from the People's Republic of China. Requestor: Nucor Corporation, SSAB N.A.D., Evraz Claymont Steel, Evraz Oregon Steel Mills, and ArcelorMittal USA Inc.; whether adding metallurgically and economically insignificant amounts of boron is a minor alteration that circumvents the antidumping duty order; requested August 13, 2008; initiated October 10, 2008.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China. Requestor: Meco Corporation; whether the common leg table (a folding metal table affixed with cross bars that enable the legs to fold in pairs) produced in the People's Republic of China is a minor alteration that circumvents the antidumping duty order; requested October 31, 2005; preliminary ruling issued October 27, 2008.

A–570–894: Certain Tissue Paper Products from the People's Republic of China. Requestor: Seaman Paper Company of Massachusetts, Inc.; whether imports of tissue paper from Thailand made out of jumbo rolls and sheets of tissue paper from the People's Republic of China are circumventing the antidumping duty order; requested September 10, 2008; initiated October 27, 2008.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

March 20, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–7221 Filed 3–30–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 090318324–9325–01]

RIN 0693–ZA89

Technology Innovation Program (TIP) Notice of Availability of Funds and Announcement of Public Meeting (Proposers' Conference)

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology's (NIST) Technology Innovation Program (TIP) announces that it will hold a single fiscal year 2009 competition and is soliciting high-risk, high-reward research and development (R&D) proposals for financial assistance. TIP also announces that it will hold a public meeting (Proposers' Conference) for all interested parties. TIP is soliciting proposals under this fiscal year 2009 competition in two areas of critical national need entitled ''Civil Infrastructure'' and ''Manufacturing'' as described in the Program Description section below.

DATES: The due date for submission of proposals is 3 p.m. Eastern Time, Tuesday, June 23, 2009. This deadline applies to any mode of proposal submission, including paper and electronic. Do not wait until the last minute to submit a proposal. TIP will not make any allowances for late submissions, including incomplete Grants.gov registration or delays by guaranteed overnight couriers. To avoid any potential processing backlogs due to last minute registrations, proposers are strongly encouraged to start their Grants.gov registration process at least four weeks prior to the proposal submission due date. Review, selection, and award processing is expected to be completed by the end of November 2009.

ADDRESSES: Proposals must be submitted to TIP as follows:

Paper Submission: Send to National Institute of Standards and Technology, Technology Innovation Program, 100 Bureau Drive, Stop 4701, Gaithersburg, MD 20899–4701.

Electronic Submission: http://www.grants.gov.

FOR FURTHER INFORMATION CONTACT: Barbara Cuthill at 301–975–3273 or by e-mail at *barbara.cuthill@nist.gov*.

SUPPLEMENTARY INFORMATION:

Additional Information. The full Federal Funding Opportunity (FFO) announcement for this request for proposals contains detailed information and requirements for the program. Proposers are strongly encouraged to read the FFO in developing proposals. The full FFO announcement text is available at *http://www.grants.gov* and on the TIP Web site at *http://www.nist.gov/tip/helpful.html*. In addition, proposers are directed to review the March 2009 Technology Innovation Program Proposal Preparation Kit available at *http://www.nist.gov/tip/helpful.html*. The TIP Proposal Preparation Kit must be used to prepare a TIP proposal. The TIP implementing regulations are published at 15 CFR part 296, and included in the TIP Proposal Preparation Kit as Appendix B.

Public Meeting (Proposers' Conference). TIP is holding a public meeting (Proposers' Conference) at NIST to provide general information regarding TIP, to offer guidance on preparing proposals, and to answer questions. Proprietary technical discussions about specific project ideas with NIST staff are not permitted at this conference or at any time before submitting the proposal to TIP. Therefore, proposers should not expect to have proprietary issues addressed at the proposers' conference. Also, NIST/TIP staff will not critique or provide feedback on project ideas while they are being developed by a proposer. However, NIST/TIP staff will answer questions about the TIP eligibility and cost-sharing requirements, evaluation and award criteria, selection process, and the general characteristics of a competitive TIP proposal at the Proposers' Conference and by phone and e-mail. Attendance at the TIP proposers' conference is not required.

The TIP Proposers' Conference is being held on the following date, time, and location:

April 8, 2009, 9 a.m.–1 p.m. Eastern Time: NIST Red Auditorium, 100 Bureau Drive, Gaithersburg, MD. Pre-registration is required by 5 p.m. Eastern Time on April 6, 2009 for the Proposers' Conference being held at NIST Gaithersburg, MD. Due to increased security at NIST, no on-site registrations will be accepted and all attendees must be pre-registered. Photo identification must be presented at the NIST main gate to be admitted to the April 8, 2009 conference. Attendees must wear their conference badge at all times while on the NIST campus. *Electronic Registration at: https://rproxy.nist.gov/CRS/.*

No registration fee will be charged at the Proposers' Conference. Presentation materials from the Proposers' Conference will be made available on the TIP Web site.

TIP may schedule additional Proposers' Conferences at other locations throughout the country. If this occurs, notices will be posted on the TIP Web site at *http://www.nist.gov/tip* and grants.gov Web site and in the **Federal Register**.

Statutory Authority. Section 3012 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, Public Law 110–69 (August 9, 2007), 15 U.S.C.A. 278n (2008).

CFDA. 11.616, Technology Innovation Program.

Program Description. TIP is soliciting proposals under this fiscal year 2009 competition in two areas of critical national need entitled ''Civil Infrastructure'' and ''Manufacturing'' as described below.

Area of Critical National Need 1: Civil Infrastructure

The objective of this competition is to provide civil infrastructure managers with tools to better manage the structural integrity of elements of the civil infrastructure. Two elements of the societal challenge of managing the Structural Integrity of the United States' Infrastructure will be addressed as outlined in the white paper ''Advanced Sensing Technologies and Advanced Repair Materials for the Infrastructure: Water Systems, Dams, Levees, Bridges, Roads, and Highways'' (*http://www.nist.gov/tip/comp09_home.html*).

Solutions to this societal challenge require advancement beyond the current practice and state-of-the-art of sensing technologies and repair/retrofit technologies. Sensing advancements are needed to assess the structural integrity and/or deterioration processes of water mains, wastewater collection systems, dams, levees, navigation lock structures, bridges, roads, and highways. Sensing technologies must be more accurate in their determinations of structural integrity, easier to use, and more economically feasible. The increased information obtained from new sensing technologies will lead to better prioritization of repair schedules; however, prioritization is only the first

step in a management strategy. Efficient infrastructure management requires that once a structural defect is detected, an economical repair be made. Advancing the technologies of repairing infrastructure elements in contact with water, in contact with salts (road salt or marine environments), and subjected to thermal changes requires transformative research to significantly extend the lifetimes of repairs, lower the costs of repairs, and provide repair technologies that are suitable for a wide range of conditions. For the scope of this competition, ''retrofit'' refers to the fitting into or onto a structure already in existence and that is in service or can be returned to service by repair. A retrofit material or application can be one that returns the infrastructure element to original specifications or that improves the performance of the infrastructure element beyond the specifications of the original construction. Novel materials and the novel methods to deploy the new materials, constituting repair/retrofit systems, can serve to help meet the societal challenge of better managing the structural integrity of civil infrastructure.

The need for advanced sensing technologies and advanced repair/retrofit materials is of national importance because nearly all municipalities and States in the nation face infrastructure management challenges. TIP's investment is justified because portions of infrastructure are reaching the end of their life spans and there are few cost effective technical means to monitor infrastructure integrity and to prioritize and implement long lived repair/retrofit of the wide variety of constructions of infrastructure elements. Transformational research beyond incremental advancements is required to achieve the objectives for this area of critical national need. Incremental improvements of current technologies will not meet the challenges of providing cost-effective, widely deployable solutions to the problems faced by infrastructure managers.

Element 1—Inspection and/or Monitoring Technologies

Proposals are being sought to create and validate new, advanced, robust, network capable, nondestructive evaluation and test sensing systems, or system components, to cost effectively and quantitatively inspect and evaluate the structural integrity of civil infrastructure elements of water and wastewater mains, dams, levees, navigation lock structures, bridges, roads and highways. The targeted system should be capable of, but not limited to, detection of corrosion, cracking, delamination and other relevant modes of failure of critical infrastructure elements and the materials of which they are made.

Solutions are needed for improved inspection systems for water and wastewater mains, dams, levees, navigation lock structures, bridges, roads, and highways, where these systems provide real-time understanding of the integrity and service life through the use of portable, mobile or remote sensing capabilities. Innovations are being sought in all aspects of a system to provide an advanced, cost effective, networked system, either fixed or mobile, that is easily deployable, self powered, and self monitoring. A complete system could include all system components, hardware, and software. In addition, the systems may, or may not, need to be underwater in order to assess underwater integrity issues.

Proposals should include validation of the effectiveness of the new technology in actual environmental use conditions with potential end user(s) of the technology.

Eligible projects that are also within the scope of this element are:

- Systems that provide new and advanced methodologies for the detection of fluid leaks from water piping systems.
- Single novel components of a system solution that include a validation of the component in a system setting.
- Inspection systems for structural components located below a water surface in part, or in whole, and susceptible to failure caused by scour, impact, degradation and/or some other subsurface mode of failure.

Ineligible projects under this element include:

- Advancements in a system component without a prototype for validating that the component is functional within a system solution, as part of the proposed technical plan.
- Straightforward improvements to existing components or materials without the potential for a transformational increase in performance to the technical requirements.
- Integration projects using only existing state-of-the-art components or materials.
- Software development that is predominantly straightforward, routine data gathering using applications of standard software development practices.

Element 2—Repair/Retrofit Material and Application Technologies

Proposals are also being sought to create novel technologies for repair or retrofit of existing civil infrastructure elements already identified above. These new technologies could be considered as consisting of two parts: A novel material and the application or deployment system for installing or placing the novel material. These novel materials and application/deployment technologies are to provide much longer-lived repairs than current repair materials and/or greater performance characteristics than current repair/retrofit methods and/or the original construction.

A proposal for development of a new material, or a novel combination of materials that results in a transformational solution for cost-effective repair/retrofit that includes a novel technology for achieving the repair or retrofit will be considered as having strong potential.

Proposals should include validation of the effectiveness of the new technology in actual environmental conditions with potential end user(s) of the technology.

Eligible projects that are within the scope of this element are:

- The combination of a novel material, or a novel combination of materials, combined with a novel application or installation technology.
- A novel application technology that incorporates an existing material, or combination of materials, from material domains outside those normally used within civil infrastructure, or that incorporates a material or combination of materials, from a domain of materials normally used within civil infrastructure. To be considered competitive, there must be a transformational expansion of applicability of the materials. An example of a project within scope would be a robotic system capable of lining water mains with a material to restore the strength of a deteriorated main to the originally specified burst strength.
- A novel material, or a combination of novel materials, that can be applied with existing application technologies, or that requires minor adjustments to existing application technologies. An example of a project within scope would be a novel reinforcing material combined with a novel compressive matrix material that could be applied using current construction practices.

Ineligible projects under this element are:

- Novel materials, or combinations of materials, that apply only to new

construction or primarily to new construction.

- A novel material, or novel combination of materials, for which there is not a deployment technology and no deployment technology approach is included in the proposed research.
- Training or training systems for repair/retrofit installation of novel materials or of current materials.
- Novel systems to deploy repair/retrofit materials, where the materials are both not novel and without a history of being long-lived repair solutions.
- Novel repair parts or assemblies that do not incorporate a novel material, for example: a new type of retrofit stirrup or bracing made from current, conventional materials or combinations of materials.

Area of Critical National Need 2: Manufacturing

The goal of the research outcome/impacts from this competition is to provide manufacturers and end users improved access to adequate quantities of advanced materials at competitive costs that allow evaluation and utilization of these materials in innovative ways. TIP's funding strategy for this competition will emphasize two important elements: (1) Process scale-up, integration, and design for advanced materials; and (2) Predictive modeling for advanced materials and materials processing. These two elements of the societal challenge of accelerating the use of advanced materials will be addressed as outlined in the white paper ''Accelerating the Incorporation of Materials Advances into Manufacturing Processes'' (*http://www.nist.gov/tip/comp09_home.html*).

Materials performance is often a critical consideration and controlling factor in the innovation process.

For example, high strength alloys, aluminum, and magnesium are used to build stronger, lighter and safer vehicles; superalloys are used to make higher efficiency gas turbines; composites make larger, more efficient wind turbine blades and provide improved performance in aerospace applications; and nanomaterials are finding their way into better performing batteries, energy storage devices, high voltage transmission lines and healthcare applications (*e.g.* imaging). Sustainable materials development and materials substitutions are additional examples where greater capabilities are critical to ongoing or increased competitiveness of U.S innovations.

Without the ability to produce these new materials and to rapidly integrate them into products while maintaining the material's unique properties, the U.S. will lose these value-added manufacturing innovations to overseas competition, a trend which has already occurred in so many industries. Outlined in this announcement are two key areas related to the manufacturability of advanced materials and descriptions of the supporting technical challenges that need to be addressed.

If successful, the manufacturing solutions envisioned would have the potential to create significant performance improvements in new products by accelerating the utilization of an advanced material's new functionality.

For purposes of this area of critical national need, the term ''advanced materials'' refers to materials that have unique functionalities but require improved controls and measurements to achieve desired functionalities in a revolutionary and cost-effective way. The unique functionality that these materials could bring to new products will require new levels of understanding in the sciences of materials processing and process control. For example, in nanomaterials, manipulation and measurement at the atomic level will be needed. In alloys, the control and measurement would be at the microscale (and eventually at the nanoscale) with an emphasis on anisotropic features of the micro (nano) structure. In composites, control and measurement would be at the mesoscale and would take advantage of the anisotropic layering of the process. Control of one material or phase within another will also be an important consideration.

There are additional classes of materials (*e.g.*, polymers, ceramics, *etc.*) that could be included in this discussion. However, the three classes of materials described above are considered to be most critical to emerging or other potential growth areas for manufacturing and will be the focus of this area of critical national need. Therefore, this competition is limited to nanomaterials; superalloys, alloys and smart materials; and composites.

Manufacturing, like so many other areas of critical national need, has a variety of challenges that need to be addressed. TIP's funding strategy for this competition will emphasize two important elements: (1) Process scale-up, integration, and design for advanced materials; and (2) Predictive modeling for advanced materials and materials processing.

Element 1—Process Scale-Up Integration and Design for Advanced Materials

New materials typically are developed in a laboratory setting in progressively larger quantities, and then samples are given to end-users for alpha and beta testing. It can take considerable time and experimentation to understand how the materials can be incorporated into a new product in a way that maintains and utilizes its unique functionality. Time is also needed to effectively integrate the processes that scale-up from laboratory quantities to commercial amounts for more efficient production. This scale-up is often non-linear and does not follow straightforward scaling laws due to the unique functionality that has been designed into the advanced materials.

Element 2—Predictive Modeling Tools for Advanced Materials and Materials Processing

Predictive modeling capabilities are key to developing new processes, scaling-up these processes and understanding how to utilize an advanced material's unique functionality. Modeling capabilities are needed to:

- Analyze and understand why a newly discovered material does what it does and then extrapolate its behavior to new conditions, and
- Incorporate this knowledge into process design tools so new products can quickly be made while maintaining the unique functionality of the materials.

To successfully address the proposed challenges for ''Accelerating the Integration of Materials Advances into Manufacturing Processes,'' research in new technologies will be needed. The table below illustrates the relationship between key challenges. The three columns of material types (nanomaterials, superalloys and composites) are arranged in order of increasing microstructural size. TIP expects proposed solutions to the challenges to map into one or more of the blank cells in the table, for the proposal to be within scope for funding under this area of critical national need.

Technological needs	Nanomaterials	Superalloys, alloys & smart materials	Composites
Materials Processing	Scale-up from Laboratory Quantities/Controls Incorporate into New Uses/Maintain Functionality		
Predictive Modeling Tools	Rules/Understand Why It Does What It Does Process Modeling/Design & Product Design Tools		

For *Element 1—Process scale-up, integration and design for advanced materials,* new processes will need to be developed. These processes will increase to commercial scale the quantity and quality of available advanced materials; or help incorporate these advanced materials into new, revolutionary products based on a new material's properties. These scaled-up processes may be a next generation or an entirely new process. For example, forging ever larger parts cannot be solved by building ever larger forges (which become prohibitively expensive), but instead by new partial forging techniques.

In support of these new processes, new instrumentation and measurement capabilities will also be needed. These instruments will need to measure real time process parameters such as the properties that provide the unique capabilities of the advanced materials (*e.g.,* composition). In addition, instruments for real time inspection are needed to ensure and/or verify materials are being correctly incorporated into manufactured products that require the revolutionary functions of these new materials.

Proposals addressing process scale-up, integration and design for advanced materials will be considered eligible if they consist of:

• A single process to achieve the goals of the scale-up, or ones that consist of one or more processes integrated together into a coherent solution;

• Scale-up of materials processes to manufacture and apply coatings that are within the three eligible material types (nanomaterials; superalloys, alloys and smart materials; and composites); or

• Scale-up of materials processes for healthcare applications (*e.g.,* imaging).

Eligible proposals addressing process scale-up, integration and design for advanced materials must address all of the following issues:

• Address one or more of the materials areas:

—Nanomaterials;
—Superalloys, alloys, and smart materials; and/or
—Composites;

• Quantify the baseline processing capabilities;

• Describe how the results of the process scale-up could lead to new products and manufacturing process capabilities; and

• Quantification and qualification of the estimated output of the final project results.

In addition, proposals for process scale-up must address both of the following issues:

• Scale-up of the quantities produced during the project must be targeted to increase by a factor of 1,000 fold or more (unit quantity per unit time) as compared to the baseline; and

• A detailed scientific rationale and description of the challenges to accomplish scale-up of the process(es).

Proposals addressing process scale-up, integration and design of advanced materials will be considered more competitive if they:

• Include validation methodologies by or with processors or end users; and/or

• Address sustainability issues.

Proposals addressing process scale-up, integration and design for advanced materials will be considered ineligible if they:

• Have the primary focus of the proposal on the following materials:

—Materials derived from a biological source;
—A pure ceramic, glass (including metallic glass), or polymer; or
—Primarily an electronic or photonic material.

• Focus primarily on the application of material coatings.

For *Element 2—Predictive modeling for advanced materials and materials processing*, new tools are needed to enable researchers to use constitutive relations and rules (with validation) concerning the underlying behavior of materials (understanding structure vs. function) and the changes to behavior due to manufacturing processes. For example, new tools will need to account for the scale-dependent behavior of advanced materials. This capability will enable a better and quicker understanding of why materials do what they do. These efforts will also enable extrapolation of that knowledge beyond the laboratory conditions for which they were developed, and therefore will need new validation and verification capabilities.

In addition, critical knowledge is also needed about why certain decisions or assumptions were made in order to incorporate new modeling capabilities for laboratory results into process design and modeling. Again, new validation and verification methodologies will be essential.

With successful development of these tools, processes, and technologies, the manufacturing communities will have significantly improved capabilities to quickly incorporate advanced materials breakthroughs into revolutionary products based on new materials functionality, and thus establish new competitive advantages in a global economy.

Eligible proposals addressing predictive modeling for advanced materials and materials processing must address all of the following issues:

• Address one or more of the eligible materials areas:

—Nanomaterials;
—Superalloys, alloys, and smart materials; and/or
—Composites;

• Quantify the baseline modeling capability; and

• Describe how the results of the proposed modeling capabilities could lead to new products and manufacturing process capabilities.

Proposals for predictive modeling for advanced materials and materials processing must address one or both of the following:

• Develop constitutive relationships and rules that describe the behavior and the process of the materials at a level that is useful for describing laboratory results, as well as for developing a greater understanding of the materials for end users; and/or

• Develop or use the constitutive relationships and rules to develop process design tools for the manufacturing processes for these advanced materials.

Proposals addressing predictive modeling for advanced materials and materials processing will be considered more competitive if they address:

• Collaboration by or with those who manufacture the advanced materials, in order to validate the models; and/or

• How users will specifically benefit from the acceleration and implementation of the proposed models in support of materials reliability (*i.e.* final properties or mechanical performance) and materials behavior before and after processing.

Proposals addressing predictive modeling for advanced materials and materials processing that do not include validation of models will be considered less competitive.

Proposals addressing predictive modeling for advanced materials and materials processing will be considered ineligible that:

• Have the primary focus of the modeling effort on the following materials:

—Materials derived from a biological source;

—A pure ceramic, glass (including metallic glass), or polymer; or

—Primarily an electronic or photonic material;

• Focus primarily on the application of material coatings.

An additional key characteristic that all manufacturing proposals must address is how the outcomes of the research will enable manufacturers to produce advanced materials faster, better and cheaper, as well as enable the new uses for the advanced materials.

Additional Requirements for All Manufacturing Proposals

Ineligible projects under this area of critical national need include:

• Projects whose principal focus is on discovery of new materials:

• Efforts related to the physical extraction of raw materials;

• Straightforward improvements to existing processes or materials without the potential for a transformational increase in performance to the technical requirements;

• Integration projects using only existing state-of-the-art processes, models or materials; or

• Software development that is predominantly straightforward, routine data gathering using applications of standard software development practices.

Additional Requirements for All Manufacturing and Civil Infrastructure Proposals

In addition to the competition-specific ineligible projects, the following are ineligible projects:

• Straightforward improvements of existing products or product development.

• Projects that are Phase II, III, or IV clinical trials. TIP will rarely fund Phase I clinical trials and reserves the right not to fund a Phase I clinical trial. The portion of a Phase I trial that may be funded must be critical to meeting evaluation criterion (a)(1) addressing the scientific and technical merit of the proposal. The trial results must be essential for completion of a critical R&D task of the project. The definitions of all phases of clinical trials are provided in the TIP Guidelines and Documentation Requirements for Research Involving Human & Animal Subjects located at *http://www.nist.gov/tip/helpful.html*.

• Pre-commercial-scale demonstration projects where the emphasis is on demonstrating that some technology works on a large scale or is economically sound rather than on R&D that advances the state of the art and is high-risk, high-reward.

• Projects that TIP determines would likely be completed without TIP funds in the same time frame or nearly the same time frame, or with the same scale or scope.

• Predominantly straightforward, routine data gathering (*e.g.*, creation of voluntary consensus standards, data gathering/handbook/specification sheet preparation, testing of materials, or unbounded research aimed at basic discovery science) or application of standard engineering practices.

• Projects in which the predominant risk is market oriented—that is, the risk that the end product may not be embraced by the marketplace.

• Projects with software work, that are predominantly about final product details and product development, and that have significant testing involving users outside the research team to determine if the software meets the original research objectives, are likely to be either uncompetitive or possibly ineligible for funding. However, R&D projects with limited software testing, involving users outside of the research team, or vertebrate animals, may be eligible for funding and contain eligible costs within a TIP award when the testing is critical to meeting evaluation criteria and/or award criteria and the testing results are essential for completion of a critical task in the proposed research. This type of testing in projects may also be considered to involve human subjects or vertebrate animals in research and require compliance with applicable Federal regulations and NIST policies for the protection of human subjects or live vertebrate animals.

Unallowable/Ineligible Costs. The following items, regardless of whether they are allowable under the Federal cost principles, are ineligible/unallowable under TIP:

a. Bid and proposal costs unless they are incorporated into a Federally-approved indirect cost rate (*e.g.*, payments to any organization or person retained to help prepare a proposal).

b. Construction costs for new buildings or extensive renovations of existing buildings. However, costs for the construction of experimental research and development facilities to be located within a new or existing building are allowable provided the equipment or facilities are essential for carrying out the proposed project and are approved in advanced by the NIST Grants Officer. These types of facility costs may need to be prorated if they will not be used exclusively for the research activities proposed.

c. Contractor office supplies and contractor expenses for conferences/workshops.

d. Contracts to another part of the same company or to another company with identical or nearly identical ownership. Work proposed by another part of the same company or by another company with identical or nearly identical ownership should be shown as funded through inter-organizational transfers that do not contain profit. Inter-organizational transfers should be broken down in the appropriate budget categories.

e. For research involving human and/or animal subjects, any costs used to secure Institutional Review Board or Institutional Animal Care and Use Committee approvals before or during the award.

f. General purpose office equipment and supplies that are not used exclusively for the research: *e.g.*, office computers, printers, copiers, paper, pens, and toner cartridges.

g. Indirect costs, which must be absorbed by the recipient. However, indirect costs are allowable for contractors under a single company or joint venture. (Note that indirect costs absorbed by the recipient may be used to meet the cost-sharing requirement.)

h. Marketing, sales, or commercialization costs, including marketing surveys, commercialization studies, and general business planning, unless they are included in a Federally approved indirect cost rate.

i. Office furniture costs, unless they are included in a Federally approved indirect cost rate.

j. Patent costs and legal fees, unless they are included in a Federally approved indirect cost rate.

k. Preaward costs: *i.e.*, any costs incurred prior to the award start date.

l. Profit, management fees, interest on borrowed funds, or facilities capital cost of money. However, profit is allowable for contractors under a single company or joint venture.

m. Project development planning (*e.g.* patent and literature searches) and creation of milestones. For example, proposals that plan on developing milestones only if an award is received and after literature searches are performed under the award are generally not competitive. Costs for literature searches in general are ineligible.

n. Relocation costs, unless they are included in a Federally approved indirect cost rate.

o. Salaries: NIST limits the salaries of project personnel to not exceed Level I of the Executive Schedule ($196,700 as of January 1, 2009, *http://www.opm.gov/oca/09tables/html/ex.asp*).

p. Tuition costs. An institution of higher education participating in a TIP project as a contractor or as a joint venture member or lead may charge TIP for tuition remission or other forms of compensation in lieu of wages paid to students working on TIP projects, but only as provided in OMB Circular A–21, Section J.41. In such cases, tuition remission would be considered a cash contribution rather than an in-kind contribution.

Funding Availability. Fiscal year 2009 appropriations include funds in the amount of approximately $25 million for new TIP awards. Approximately $10 million is available for the Civil Infrastructure area of critical national need and approximately $15 million is available in the Manufacturing area of critical national need. Approximately 25 total awards are anticipated. The anticipated start date is January 1, 2010. The period of performance depends on the R&D activity proposed. A single company can receive up to a total of $3 million with a project period of performance of up to 3 years. A joint venture can receive up to total of $9 million with a project period of performance of up to 5 years. Continuation funding after the initial award is based on satisfactory performance, availability of funds, continued relevance to program objectives, and is at the sole discretion of NIST.

Eligibility Criteria. Single companies and joint ventures may apply for TIP funding as provided in 15 CFR 296.2, 296.4, and 296.5.

Large-sized Company Participation. A large-sized company is not eligible to apply for TIP funding. A large-sized company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of $1.63 billion. This number is based on the May 2008 issue of *Fortune* magazine's Fortune 1000 list. (Note that the revenue amount will be updated annually and will be noted in future annual announcements of availability of funds.)

Cost-Sharing Requirements. Proposers must provide a cost share of at least 50 percent of the yearly total project costs (direct plus all of the indirect costs).

Evaluation and Award Criteria. Proposals are selected for funding based on the evaluation criteria listed in 15 CFR 296.21 and the award criteria listed in 15 CFR 296.22 as identified below. Additionally, no proposal will be funded unless TIP determines that it has scientific and technical merit and that the proposed research has strong potential for addressing a societal challenge within the TIP-identified area of critical national need as described in this notice. Detailed guidance on how to address the evaluation and award criteria is provided in Chapter 2 of the TIP Proposal Preparation Kit, which is available at *http://www.nist.gov/tip/helpful.html*.

Evaluation Criteria. The two components of the evaluation criteria and respective weights as listed in 15 CFR. 296.21 are as follows:

(a)(1) The proposer(s) adequately addresses the scientific and technical merit and how the research may result in intellectual property vesting in a United States entity including evidence that:

(i) The proposed research is novel;

(ii) The proposed research is high-risk, high-reward;

(iii) The proposer(s) demonstrates a high level of relevant scientific/technical expertise for key personnel, including contractors and/or informal collaborators, and has access to the necessary resources, for example research facilities, equipment, materials, and data, to conduct the research as proposed;

(iv) The research result(s) has the potential to address the technical needs associated with a major societal challenge not currently being addressed; and

(v) The proposed research plan is scientifically sound with tasks, milestones, timeline, decision points and alternate strategies.

(2) Total weight of (a)(1)(i) through (v) is 50%.

(b)(1) The proposer(s) adequately establishes that the proposed research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base and to address areas of critical national need through transforming the Nation's capacity to deal with a major societal challenge(s) that is not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer including an explanation in the proposal:

(i) Of the potential magnitude of transformational results upon the Nation's capabilities in an area;

(ii) Of how and when the ensuing transformational results will be useful to the Nation; and

(iii) Of the capacity and commitment of each award participant to enable or advance the transformation to the proposed research results (technology).

(2) Total weight of (b)(1)(i) through (iii) is 50%.

Award Criteria. The six components of the award criteria as listed in 15 CFR 296.22 are as follows:

(a) The proposal explains why TIP support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance from TIP;

(b) The proposal demonstrates that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal;

(c) The proposal explains the novelty of the research (technology) and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar research results (technologies);

(d) The proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner; and

(e) The proposal establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base; and

(f) The proposal establishes that the proposed transformational research (technology) has strong potential to address areas of critical national need through transforming the Nation's capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer.

NIST must determine that a proposal successfully meets all six award criteria for the proposal to receive funding under the Program.

Selection Factors. In making final selections, the Selecting Official will select funding recipients based upon the Evaluation Panel's rank order of the proposals and the following selection factors:

a. Assuring an appropriate distribution of funds among technologies and their applications,

b. Availability of funds, and/or

c. Program priorities.

Program Priorities. TIP is soliciting proposals under this fiscal year 2009 competition in two areas of critical nation need entitled ''Civil Infrastructure'' and ''Manufacturing'' as described in the Program Description section above.

Selection Procedures. Proposals are selected based on a multi-disciplinary peer-review process, as described in 15 CFR 296.20. A preliminary review is conducted to determine if the proposal is in accordance with 15 CFR 296.3; complies with the eligibility requirements described in 15 CFR 296.5; addresses award criteria (a) through (c) of 15 CFR 296.22; was submitted to a previous TIP competition, and if so, has been substantially revised; and is complete. Proposals that are incomplete or do not meet any one of the preliminary review requirements will normally be eliminated. All remaining proposals are then carefully reviewed based on the TIP evaluation criteria listed in 15 CFR 296.21 and award criteria listed in 15 CFR 296.22. An Evaluation Panel consisting of Federal employees will present funding recommendations to a Selecting Official in rank order for further consideration. The Selecting Official makes the final selections for funding. The selection of proposals by the Selecting Official is final and cannot be appealed. The final approval of selected proposals and award of assistance will be made by the NIST Grants Officer. The award decision of the NIST Grants Officer is final and cannot be appealed. NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. This may include requesting that the proposer delete from the scope of work a particular task that is deemed by NIST to be inappropriate for support. NIST also reserves the right to reject a proposal where information exists that raises a reasonable doubt as to the responsibility of the proposer.

Intellectual Property Requirements. For single company award recipients, pursuant to the Bayh-Dole Act (35 U.S.C. 202 (a) and (b)) and ''Memorandum to the Heads of Executive Departments and Agencies: Government Patent Policy'' (February 18, 1983), the entity that invents owns the invention. However, pursuant to 35 U.S.C. 202(a)(i), when a single company or its contractor under a TIP award is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government, NIST will require that title to inventions made by such parties be transferred to a United States entity that will ensure the commercialization of the technology in a timely fashion.

For joint ventures, ownership of inventions arising from a TIP-funded project may vest in any participant in a joint venture, as agreed by the members of the joint venture (notwithstanding 35 U.S.C. 202 (a) and (b)). *(Participant includes any entity that is identified as a recipient, subrecipient, or contractor on an award to a joint venture.)*

Title to any such invention shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such invention.

Should the last existing participant in a joint venture cease to exist prior to the expiration of the first patent obtained in connection with any invention developed from assistance provided under TIP, title to such patent must be transferred or passed to a U.S. entity that can commercialize the technology in a timely fashion.

The United States reserves a nonexclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any intellectual property developed from a TIP award. The Federal government shall not in the exercise of such license publicly disclose proprietary information related to the license. This does not prohibit the licensing to any company of intellectual property rights arising from a TIP-funded project. (15 CFR 296.11(b)(3)). The Federal government also has march-in rights in accordance with 37 CFR 401.6. Intellectual property means an invention patentable under title 35, United States Code, or any patent on such an invention, or any work for which copyright protection is available under title 17, United States Code. (15 CFR 296.2.)

Projects Involving Human Subjects. Research involving human subjects must be in compliance with applicable Federal regulations and NIST policies for the protection of human subjects. Human subjects research activities involve interactions with live human subjects or the use of data, images, tissue, and/or cells/cell lines (including those used for control purposes) from human subjects. Research involving human subjects may include activities such as the use of image and/or audio recording of people, taking surveys or using survey data, using databases containing personal information, testing software with volunteers, and many tasks beyond those within traditional biomedical research. A Human Subjects Determination Checklist is included in the March 2009 TIP Proposal Preparation Kit in Chapter 4 (*http://www.nist.gov/tip/helpful.html*) to assist you in determining whether your proposed research plan has human subjects involvement, which would require additional information in your proposal submission, and possibly more documentation during the Evaluation Panel's consideration of your proposal. See the TIP Guidelines and Documentation Requirements for Research Involving Human & Animal Subjects for more specific information on documentation requirements and due dates for documentation located at *http://www.nist.gov/tip/helpful.html* or by calling 1–888–847–6478. President Obama has issued Exec. Order No. 13,505, 74 FR 10667 (March 9, 2009), revoking previous executive orders and Presidential statements regarding the use of human embryonic stem cells in research. NIST will follow any guidance issued by the National Institutes of Health (NIH) pursuant to the executive order and will develop its own procedures based on the NIH guidance before funding research using human embryonic stem cells. NIST will follow any additional polices or guidance issued by the current Administration on this topic.

Projects Involving Live Vertebrate Animals. Research involving live vertebrate animals must be in compliance with applicable Federal regulations and NIST policies for the protection of live vertebrate animals. Vertebrate animal research involves live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals or for teaching or testing. The regulations do not apply to animal tissues purchased from commercial processors or tissue banks or to uses of preexisting images of animals (*e.g.*, a wildlife documentary or pictures of animals in newscasts). The regulations do apply to any animals that are transported, cared for, euthanized or used by a project participant for testing, research, or training such as testing of new procedures or projects, collection of biological samples or observation data on health and behavior. Detailed information regarding the use of live vertebrate animals in research plans and

required documentation is available in the TIP Guidelines and Documentation Requirements for Research Involving Human & Animal Subjects located at *http://www.nist.gov/tip/helpful.html* or by calling 1–888–847–6478.

Executive Order 12372 (Intergovernmental Review of Federal Programs). Proposals under this program are not subject to Executive Order 12372.

Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq*.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

E.O. 13132 (Federalism). This notice does not contain policies with Federalism implications as defined in Executive Order 13132.

E.O. 12866 (Regulatory Planning and Review). This notice is determined to be not significant under Executive Order 12866..

Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to, comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This notice contains collection-of-information requirements subject to the PRA. The use of Form NIST–1022, Standard Form-424 (R&R), SF–424B, SF–LLL, Research and Related Other Project Information Form, and CD–346 has been approved by OMB under the respective control numbers 0693–0050, 4040–0001, 4040–0007, 0348–0046, 4040–0001, and 0605–0001.

Administrative and National Policy Requirements. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, 73 FR 7696–05 (Feb. 11, 2008), apply to this solicitation. On the form SF–424 (R&R) item 3. Organization DUNS and item 6. Employer Identification (EIN) or (TIN), the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) and the applicants 9-digit Employer Identification Number (EIN) or Taxpayer Identification Number (TIN) must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple DUNS and EIN or TIN numbers, the DUNS and EIN or TIN numbers MUST be the numbers for the applying entity. Entities that provide incorrect/inconsistent DUNS and EIN or TIN numbers may experience significant delays in submitting their proposals through Grants.gov and receiving funds if the proposal is selected for funding.

Dated: March 25, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–7192 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Recreational Landings Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 1, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margo Schulze-Haugen, (301) 713–2347 or *Margo.Schulze-Haugen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Recreational catch reporting provides important data used to monitor catches of Atlantic highly migratory species (HMS) and supplements other existing data collection programs. The data collected through this program are currently used for both domestic and international fisheries management and stock assessment purposes.

Atlantic bluefin tuna (BFT) catch reporting provides real-time catch information used to monitor the recreational BFT fishery. Under the Atlantic Tunas Convention Act of 1975 (ATCA, 16 U.S.C. 971), the United States is required to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as necessary and appropriate, including a specified BFT quota. This program supports BFT quota monitoring and scientific research authorized under ATCA and the Magnuson-Stevens Fishery Conservation and Management Act (MSFMCA, 16 U.S.C. 1801 et seq.). Recreational anglers are required to report specific information regarding their catch after they land a BFT.

Atlantic billfish and swordfish are managed internationally by ICCAT and nationally under ATCA and the MSFMCA. This collection provides information needed to monitor the recreational limit established by ICCAT for Atlantic blue and white marlin, and the recreational catch of North Atlantic swordfish, which is applied to the ICCAT established U.S. quota. This collection also provides information on recreational landings of West Atlantic sailfish which is unavailable from established monitoring programs. The collection of sailfish catch information is authorized under MSFCMA for purposes of stock management.

II. Method of Collection

Respondents reporting BFT landings in all states (including the United States Virgin Islands and the Commonwealth of Puerto Rico) other than Maryland or North Carolina may use either an Internet Web site or an interactive voice response (IVR) telephone system. The respondents reporting Atlantic marlin, West Atlantic sailfish, or North Atlantic swordfish in all states (including the United States Virgin Islands and the Commonwealth of Puerto Rico) other than MD or NC may use either an Internet Web site or a toll-free telephone number. In MD and NC, a paper reporting system is used for all of the aforementioned species. Respondents in MD and NC must submit a landing card at a state reporting station. The states that participate in a landing card program must submit weekly reports and one annual report to NOAA to summarize landings and results to date.

III. Data

OMB Control Number: 0648–0328.
Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 10,968.

Estimated Time Per Response: 5 minutes for an initial call-in or Internet report; 5 minutes for a confirmation call; 10 minutes for a landing card; 1 hour for a weekly state report; and 4 hours for an annual state report.

Estimated Total Annual Burden Hours: 1,403.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7187 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socio-Economic Assessment of Gulf of Mexico Fisheries Under the Limited Access Privilege Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 1, 2009.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Juan J. Agar, (305) 361–4218 or *Juan.Agar@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect demographic, cultural, economic and social information about Gulf of Mexico fisheries managed under the limited access privilege program (LAPP). The survey also intends to inquire about the industry's perceptions, attitudes and beliefs about the performance of the LAPP. The data gathered will be used to describe the social and economic changes brought about by the LAPP, assess the economic performance of the industry under the LAPP, and evaluate the socio-economic impacts of future federal regulatory actions. In addition, the information will be used to strengthen and improve fishery management decision-making, satisfy legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 et seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

The socio-economic information sought will be collected via in-person, telephone and mail surveys.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 1 hr.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7189 Filed 3–30–09; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Thirteenth Renewal

The Commodity Futures Trading Commission has determined to renew the charter of the Commission's Agricultural Advisory Committee for a further period of two years. The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq*.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by

writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on March 24, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–7063 Filed 3–30–09; 8:45 am]

BILLING CODE 4915–01–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 April 30, 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 Director, 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: March 25, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Title V Promoting Postbaccalaureate Opportunities for Hispanic Americans Application.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 7,500.

Abstract: Collection of the information is necessary in order that the Secretary of Education can carry out the new graduate Promoting Postbaccalaureate Opportunities for Hispanic Americans Program under Title V, Part B of the Higher Education Act of 1965, as amended, and by the Higher Education Extension Act of 2008. The information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3988. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–7169 Filed 3–30–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education Overview Information; Territories and Freely Associated States Education Grant (T&FASEG) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.256A.

Dates:

Applications Available: April 23, 2009.

Deadline for Transmittal of Applications: June 10, 2009.

Deadline for Intergovernmental Review: August 8, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Territories and Freely Associated States Education Grant (T&FASEG) program supports projects to raise student achievement through direct educational services. Grants are awarded competitively to local educational agencies (LEAs) in the U.S. Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands) and the Republic of Palau. The LEA may use grant funds to carry out activities authorized by the Elementary and Secondary Education Act of 1965, as amended (ESEA), including teacher training, curriculum development, the development or acquisition of instructional materials, and general school improvement and reform.

Under the T&FASEG program, the Secretary awards grants for projects to—

(a) Conduct activities consistent with the programs described in the ESEA, including the types of activities authorized under—

(1) Title I of the ESEA—Improving the Academic Achievement of the Disadvantaged.

(2) Title II of the ESEA—Preparing, Training, and Recruiting High-Quality Teachers and Principals.

(3) Title III of the ESEA—Language Instruction for Limited English Proficient and Immigrant Students.

(4) Title IV of the ESEA—21st Century Schools.

(5) Title V of the ESEA—Promoting Informed Parental Choice and Innovative Programs; and

(b) Provide direct educational services that assist all students with meeting

challenging State academic achievement standards.

Note: The Secretary interprets the term ''*direct educational services''* to mean—

(1) Activities that are designed to improve student achievement or the quality of education; and

(2) Instructional services for students and teacher training.

Note: The full text of the ESEA can be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/.*

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2009 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Reading Literacy: The Secretary is particularly interested in receiving applications that focus on building early reading literacy skills that will help to improve student achievement in reading and language arts as measured by State academic standards. Research shows that children who read well in the early grades are far more successful in later years, and those who fall behind often stay behind when powerful interventions are not provided for early struggling readers.[1] Reading opens the door to learning about math, history, science, literature, geography, and much more. Thus, young, capable readers can succeed in these subjects, take advantage of other opportunities, and develop confidence in their own abilities. At the same time, those students who cannot read well are much more likely to drop out of school. As such, reading is undeniably critical to success in today's society. The Secretary encourages applicants to align their projects with the second performance measure described in section VI. 4. *Performance Measures* of this notice.

Invitational Priority 2—Teacher Quality: The Secretary is particularly interested in LEA projects that focus on professional development and teacher training in order to improve teacher qualifications and the quality of teaching and instruction. A major objective of the ESEA is to ensure that all students, regardless of race, ethnicity, or income, have the best teachers possible. A well-prepared teacher is vitally important to a child's education. In fact, research demonstrates the positive correlation between teacher quality and student academic achievement.[2] The Secretary, thus, encourages applicants to align their projects with the first performance measure described in section VI. 4. of this notice.

Invitational Priority 3—Improve Student Achievement in Mathematics: The Secretary is particularly interested in receiving applications that focus on innovative projects that improve student achievement in mathematics as measured by State academic standards. Current research indicates that little is known about the factors that influence mathematics achievement in the Pacific Region.[3] Therefore, the Secretary encourages grant recipients under this program to develop more consistent, comparable measures of mathematics achievement across the jurisdictions. The Secretary also encourages applicants to align their projects with the third performance measure described in section VI. 4. of this notice.

Program Authority: 20 U.S.C. 6331.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,750,000 of FY 2008 funds are available for new awards in FY 2009.

Estimated Range of Awards: $800,000–$1,000,000.

Estimated Average Size of Awards: $900,000.

Estimated Number of Awards: 4–6.

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

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the Republic of Palau.

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

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain the application package electronically by downloading it from the Territories and Freely Associated States Education Grant Program Web site: *http://ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from the program office, contact: Valerie Rogers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6400. Telephone (202) 260–2543 or by e-mail: *Valerie.Rogers@ed.gov* or Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W219, Washington, DC 20202–6400. Telephone (202) 260–1425 or by e-mail: *Donna.Sabis-Burns@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 person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The project narrative is where you, the applicant, address the selection criteria that reviewers will use to evaluate your application. Applicants are strongly encouraged to limit the project narrative to no more than 35 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

[1] Phillips, L.M., Hayward, D.V., & Norris, S.P. (in press). *Persistent reading disabilities: Challenging six erroneous beliefs.* In A. McGill-Franzen & R.L. Allington (Eds.), Handbook of reading disability research. New York: Routledge.

[2] Quint, J., Akey, T., Rappaport, S., & Willner, C. (2007). *Instructional Leadership, Teaching Quality and Student Achievement Suggestive Evidence from Three Urban School Districts.* New York, NY: MDRC.

[3] Chesswas, R., and Lee, L. (2008). *A status report on middle school mathematics assessment and student achievement in the Pacific Region* (Issues & Answers Report, REL 2008–No. 043). Washington, DC: U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Pacific. Retrieved from *http://ies.ed.gov/ncee/edlabs.*

The page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the letters of support. However, the page limit does apply to all of the project narrative section.

3. *Submission Dates and Times:*

Applications Available: April 23, 2009.

Deadline for Transmittal of Applications: June 10, 2009. Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 8, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Application for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Territories and Freely Associated States Education Grant Program competition, CFDA number 84.256A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Territories and Freely Associated States Education Grant Program 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 84.256, not 84.256A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically provided on the following forms: Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or

submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us with 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 one of the persons listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Valerie Rogers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6400. Telephone: (202) 260–2543 or by e-mail: *Valerie.Rogers@ed.gov*, or Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W219, Washington, DC 20202–6140. Telephone: (202) 260–1425 or by e-mail: *Donna.Sabis-Burns@ed.gov*.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.256A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.256A), 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 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. The maximum score for each criterion is indicated after the title of the criterion. The maximum score for all selection criteria is 100 points.

As provided for in section 1121(b)(3)(B) of the ESEA, the Secretary, in making awards under this program, will take into consideration the recommendations of Pacific Resources for Education and Learning (PREL) (formerly Pacific Region Educational Laboratory). PREL will use the following criteria in developing its recommendations, and the Secretary will use them in making final funding decisions. The notes following the selection criteria are meant to serve as guidance to assist the applicant in creating a stronger application and are not required by statute or regulation.

(a) *Need for project.* (5 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project. (34 CFR 75.210(a)(2)(i))

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (34 CFR 75.210(a)(2)(ii))

(iii) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure. (34 CFR 75.210(a)(2)(iii))

Note: In addressing this criterion, applicants may want to consider including in the project narrative information that clearly demonstrates the unique needs and circumstances that justify funding support for their project. Applicants may also consider including information to demonstrate the extent to which local resources are used to meet the needs addressed by the project proposal.

(b) *Significance.* (10 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project. (34 CFR 75.210(b)(2)(i))

(ii) The significance of the problem or issue to be addressed by the proposed project. (34 CFR 75.210(b)(2)(ii))

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement. (34 CFR 75.210(b)(2)(xiv))

(c) *Quality of the project design.* (25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (34 CFR 75.210(c)(2)(i))

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (34 CFR 75.210(c)(2)(ii))

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources. (34 CFR 75.210(c)(2)(xvi))

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (34 CFR 75.210(c)(2)(xviii))

(v) The extent to which the proposed project encourages parental involvement. (34 CFR 75.210(c)(2)(xix))

(vi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project. (34 CFR 75.210(c)(2)(xxi))

(d) *Adequacy of resources.* (5 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project. (34 CFR 75.210(f)(2)(iii))

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210(f)(2)(iv))

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (34 CFR 75.210(f)(2)(v))

(e) *Quality of project personnel.* (15 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (34 CFR 75.210(e)(3)(i))

(ii) The qualifications, including relevant training and experience, of key project personnel. (34 CFR 75.210(e)(3)(ii))

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors. (34 CFR 75.210(e)(3)(iii))

Note: In addressing this criterion, applicants may want to consider including curriculum vitae, resumes, etc., of key project personnel.

(f) *Quality of the project evaluation.* (25 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies. (34 CFR 75.210(h)(2)(iii))

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (34 CFR 75.210(h)(2)(iv))

Note: In addressing this criterion, applicants may want to consider aligning their evaluations with the performance measures described in section VI. 4 of this notice.

(g) *Quality of project services.* (15 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (34 CFR 75.210(d)(3)(i))

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (34 CFR 75.210(d)(3)(iv))

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (34 CFR 75.210(d)(3)(v))

(iv) The extent to which the services to be provided by the proposed project are focused on those with greatest needs. (34 CFR 75.210(d)(3)(xi))

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 expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Department has developed the following three performance measures for evaluating the effectiveness of the T&FASEG program:

(1) The percentage of teachers participating in professional development activities under the T&FASEG program who demonstrate progress toward State teacher certification;

(2) The percentage of students participating in reading programs under the T&FASEG program who score proficient or above in reading on State assessments; and

(3) The percentage of students participating in mathematics programs under the T&FASEG program who score proficient or above in mathematics on State assessments.

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 performance and final reports, data about its progress in meeting these measures.

VII. Agency Contacts

For Further Information Contact: Valerie Rogers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W241, Washington, DC 20202–6140. Telephone: (202) 260–2543 or by e-mail: *Valerie.Rogers@ed.gov* or Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W219, Washington, DC 20202–6400. Telephone: (202) 260–1425 or by e-mail: *Donna.Sabis-Burns@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 one of the program contact persons listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You can also view this document in text or PDF at the following site: *http://www.ed.gov/programs/tfasegp/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: March 26, 2009.

Joseph C. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–7218 Filed 3–30–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education;

Overview Information; Undergraduate International Studies and Foreign Language Program; Notice Inviting Applications for New Awards For Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.016A.

Dates:

Applications Available: March 31, 2009.

Deadline for Transmittal of Applications: April 30, 2009.

Deadline for Intergovernmental Review: June 29, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Undergraduate International Studies and Foreign Language (UISFL) Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Priorities: This notice contains one competitive preference priority and four invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from the regulations for this program (34 CFR 658.35).

Competitive Preference Priority: For FY 2009, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

Applications that (a) require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or to have

demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Under this competition, we are particularly interested in applications that address the following priorities. *Invitational Priorities*: For FY 2009, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Applications that propose projects that provide in-service training for K–12 teachers in foreign languages and international studies and that strengthen instruction in foreign languages and international studies in teacher education programs.

Invitational Priority 2: Applications that propose projects that include a plan for assessment of student foreign language competency. A plan of assessment should include clearly defined student-learning outcomes and externally validated assessment approaches. The applicant should describe procedures for utilizing the assessment data to improve foreign language program effectiveness.

Invitational Priority 3: Applications that propose projects that support an increase in the number of underrepresented minorities who are studying foreign languages and area and international studies.

Invitational Priority 4: Applications that focus on any of the seventy-eight (78) priority languages listed below that were selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to Institutions of Higher Education (IHEs) only.

Areas of National Need: In accordance with section 601(c) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1121(c)(1), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web sites: *http://www.ed.gov/about/offices/list/ope/policy.html http://www.ed.gov/programs/iegpsugisf/legislation.html.* Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,565,000.

Estimated Range of Awards: Single Institution: $50,000–$90,000. Consortia/Organizations/Associations: $80,000–$140,000.

Estimated Average Size of Awards: Single Institution: $82,000. Consortia/Organizations/Associations: $110,000.

Maximum Award: We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months for a single institution application, and $140,000 for a single budget period of 12 months for a consortia/organization/association application. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 27.

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

Project Period: Single Institutions: Up to 24 months. Consortia/Organizations/Associations: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of Higher Education (IHEs); (2) Combinations of IHEs; (3) Partnerships between nonprofit educational organizations and IHEs; and (4) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL Program grantees must provide matching funds in either of the following ways: (a) Cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of Title III or under Title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

IV. Application and Submission Information

1. *Address to Request Application Package:* Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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 listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] that addresses the selection criteria to no more than 40 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom,

and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures and graphs. These items may be single spaced. Charts, tables, figures, and graphs in the program narrative count toward the page limit.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. However, the page limit does apply to all of the application narrative section [Part III]. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you apply these standards and exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 31, 2009.

Deadline for Transmittal of Applications: April 30, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 29, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Undergraduate International Studies and Foreign Language (UISFL) Program, CFDA number 84.016A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the UISFL Program at *http://www.Grants.gov*. You must search for the downloadable application package for this program competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.016, not 84.016A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your

application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in Section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention:

(CFDA Number 84.016A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2009, applications will be randomly divided and reviewed by separate panels of language and area studies experts. A rank order from highest to lowest score will be developed and used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31 through 658.34. The following criteria are used to evaluate all applications: (a) Plan of operation (15 points); (b) quality of key personnel (10 points); (c) budget and cost effectiveness (10 points); (d) adequacy of resources (5 points); and (e) evaluation plan (20 points). The following additional criteria are applied to applications submitted by an IHE or a combination of IHEs: (a) Commitment to international studies (10 points); (b) elements of the proposed international studies program (10 points); and (c) need for and prospective results of the proposed program (10 points). The following additional criterion is applied to applications from organizations and associations: Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (30 points).

3. *Application Requirements:* In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA requires that each application must include—

(A) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(B) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(C) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL program;

(D) An assurance that each institution, combination or partnership will use the Federal assistance provided under the UISFL program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(E) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(F) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, where applicable; and

(G) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. 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 objective for the UISFL program is to meet the Nation's security and economic needs through the development of a national capacity in foreign languages and area and international studies.

The Department will use the following UISFL performance measures to evaluate its success in meeting this objective:

Performance measure 1: Percentage of priority languages addressed/covered by foreign language major, minor, or certificate programs created or enhanced, by language courses created or enhanced, or by faculty or instructor positions created with UISFL or matching funds in the reporting period.

Performance measure 2: Percentage of projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency measure: Cost per high-quality, successfully completed project.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for these measures. Reporting screens for institutions may be viewed at: *http://www.ieps-iris.org/iris/pdfs/uisfl.pdf.*

VII. Agency Contact

For Further Information Contact: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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 of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: March 25, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–7224 Filed 3–30–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–98–L]

Application To Export Electric Energy; Western Systems Power Pool

AGENCY: Office Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Thirteen members of the Western Systems Power Pool (WSPP) are authorized to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act. One authorized exporter, TransCanada Energy Marketing ULC (TCEM), has transferred its wholesale electric trading operations to an affiliate and requests that the electricity export authorization contained in Order No. EA–98–K be amended to reflect this change.

DATES: Comments, protests or requests to intervene must be submitted on or before April 30, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. 824a(e)).

On September 5, 1996, in Order No. EA–98–C, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized 42 members of the WSPP to export electric energy to Canada. In several subsequent proceedings in the EA–98 docket, the list of members authorized to export was modified to add, delete, or reflect corporate name changes. The most recent order, EA–98–K, was issued on November 9, 2007, and authorizes 13 WSPP member companies individually to transmit electric energy to Canada. The international transmission facilities authorized for use by those exporters are owned by the Bonneville Power Administration, also a WSPP member. The facilities consist of two 500-kV transmission lines and one 230-kV transmission line that interconnect with facilities of BC Hydro, and one 230-kV line that interconnects with West Kootenay Power, Limited. The construction and operation of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively. The current authorization to various members of the WSPP to export electric energy to Canada will expire on April 25, 2012.

On February 23, 2009, WSPP submitted an application on behalf of TCEM, one of the 13 authorized exporters, informing DOE that TCEM would transfer its wholesale electric trading operations to its newly formed affiliate, TransCanada Energy Sales Ltd. (TES), effective March 1, 2009, and requested an order be issued to WSPP removing TCEM as an authorized exporter and adding TES.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above. Additional copies are to be filed directly with Matthew K. Segers, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005–3802.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov*.

Issued in Washington, DC, on March 26, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–7167 Filed 3–30–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: April 15, 2009 at 1–2 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, commercialization efforts for both energy efficiency and renewable energy, consider potential collaborative activities involving the State Energy offices, and update members on their routine business matters.

Public Participation: The teleconference is open to the public.

Written statements may be filed with the Board either before or after the teleconference. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the teleconference; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the teleconference in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org*.

Issued at Washington, DC, on March 24, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–7164 Filed 3–30–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Final Policy; Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Notice of final policy.

SUMMARY: In July 2007, the Bonneville Power Administration released its Long-Term Regional Dialogue Final Policy (RD Policy) and associated Record of Decision (ROD). The RD Policy proposed specific, related changes to BPA's May 2000 Policy on Determining Net Requirements Under Sections 5(b)(1) and 9(c) of the Northwest Power Act (5(b)/9(c) Policy) that BPA identified as necessary for the successful implementation of the RD Policy. Accordingly, BPA conducted a limited-scope review of its 5(b)/9(c) Policy for the purpose of supporting the implementation of the RD Policy.

Section II.B.8 of the RD Policy describes the limited changes to the 5(b)/9(c) Policy. BPA issued its 2008 Proposal for Modifications to BPA's Policy on Determining Net Requirements Under Sections 5(b) and 9(c) of the Northwest Power Act for public comment in September 2008. Proposed modifications to the 5(b)/9(c) Policy were limited to the changes stated in the RD Policy and necessary enabling language. Upon review and consideration of comment, BPA is now releasing its Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)/(1) and 9(c) of the Northwest Power Act and its associated ROD.

DATES: On March 19, 2009, the BPA Administrator signed the 5(b)/9(c) ROD adopting the Revised Policy on Determining Net Requirements of Pacific Northwest Utility Customers Under Sections 5(b)(1) and 9(c) of the Northwest Power Act.

ADDRESSES: The Revised 5(b)/9(c) Policy and ROD are available on the BPA Web site at *http://www.bpa.gov/power/pl/regionaldialogue/implementation/documents/*. Copies are also available by contacting BPA's Public Information Center at (800) 622–4520.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Regional Dialogue Program Manager, at (503) 230–7638.

Issued in Portland, Oregon on March 20, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer, Bonneville Power Administration.

[FR Doc. E9–7168 Filed 3–30–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–81–000]

Atmos Energy Corporation; Notice of Application

March 24, 2009.

Take notice that on March 13, 2009, Atmos Energy Corporation, Lincoln Centre II, 5430 LBJ Freeway, Dallas, Texas 75240, filed in Docket No. CP09–81–000, an application pursuant to section 7(f) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a service area determination for the Bristol, Tennessee and Bristol, Virginia area, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://ww.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to James H. Jeffries IV, Moore & Van Allen PLLC, Bank of America Corporate Center, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202–4003, telephone 704–331–1000, e-mail *jimjeffries@mvalaw.com*.

Pursuant to section 157.9 of the Commission's rules, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the

Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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.

Comment Date: April 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7082 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–398–005; CP07–403–001]

Gulf Crossing Pipeline Company LLC; Enogex LLC; Notice of Application

March 24, 2009.

Take notice that on March 17, 2009, Gulf Crossing Pipeline Company LLC (Gulf Crossing), and Enogex LLC (Enogex) filed a request to amend its certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) which authorized the siting, construction, and operation of facilities on April 30, 2008. In its amendment, the applicants seek to amend an operating lease agreement between the two parties to amend a range of quantities specified in the existing Operating Lease dated February 28, 2007 to specific quantities as stated in the application of amendment to certificate authorization. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice. The instant filing may be also 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 field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Houston, Texas 77046 or by telephone at 713–479–8803 or telecopy to 713–479–1846 or e-mail to *kyle.stephens@bwpmlp.com*, or to Patricia D. Horn, Vice President and General Counsel, Legal, Regulatory, Environmental, Health and Safety, Enogex LLC, 515 Centrla Park Drive, Suite 600, Oklahoma City, OK 73105; by phone to 405–558–4636 or by e-mail to *hornpd@oge.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on Friday, April 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7084 Filed 3–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–10828–007]

Occoquan River Project; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

March 24, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 10828–007.

c. *Date Filed:* January 15, 2009.

d. *Applicant:* Fairfax Water.

e. *Name of Project:* Occoquan River Project.

f. *Location:* Occoquan River in Prince William and Fairfax Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Contact:* Mr. Greg Prelewicz, Chief, Source Water Protection and Planning, Fairfax Water, 8560 Arlington Boulevard, Fairfax, VA 22032, (703) 289–6318, *gprelewicz@fairfaxwater.org.*

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, and preliminary terms and conditions, is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* The applicant proposes to surrender the license for the Occoquan River Project. In addition, the applicant proposes to decommission and keep both the upper and lower dams for continued use in water supply storage. Further, the applicant proposes to decommission the powerhouse, generating units, and penstock at the upper dam. The existing powerhouse intake structure and the draft tube pit will be backfilled with concrete. The applicant proposes to construct a new, gated, reinforced concrete tower within the footprint of the demolished portion of the powerhouse at the upper dam. The applicant also proposes to remove all generating units located in a pump station near the lower dam. The penstock for the lower dam is to remain in place. The applicant consulted with federal, state, and local agencies, and other parties with potential interest, in the license surrender.

l. *Locations of the Application:* A copy of the application 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://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or e-mail *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. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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 all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Comments, motions to intervene, protests, or terms and conditions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(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. E9–7083 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 24, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–54–012.

Applicants: ISO New England Inc.; New England Power Pool.

Description: Report of ISO New England Inc. regarding the implementation of market rule changes to permit non-generating resources to participate in the Regulation market.

Filed Date: 3/19/2009.

Accession Number: 20090319–5062.

Comment Date: 5 p.m. Eastern Time on Thursday, April 9, 2009.

Docket Numbers: ER09–863–000.

Applicants: SMART Papers Holdings, LLC.

Description: Smart Papers Holdings, LLC submits Petition for Acceptance of FERC Electric Tariff, Original Volume 1, Waivers and Blanket Authority.

Filed Date: 3/23/2009.

Accession Number: 20090324–0001.

Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–34–001; ES08–29–002.

Applicants: System Energy Resources, Inc.

Description: Application of System Energy Resources, Inc., for Modification of Authority Under Federal Power Act Section 204(a).

Filed Date: 3/23/2009.

Accession Number: 20090323–5135.

Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–7069 Filed 3–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08–6–002; CP09–56–000]

Midcontinent Express Pipeline LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed MEP Amendment and Expansion Projects and Request for Comments on Environmental Issues

March 24, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Midcontinent Express Pipeline LLC (MEP) Amendment and Expansion Projects (MEP Amendment and Expansion) involving construction and operation of facilities by Midcontinent Express Pipeline LLC in Lamar and Cass Counties, Texas; Union Parish, Louisiana; and Hinds County, Mississippi.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice supersedes the ''Notice of Intent to Prepare an Environmental Assessment for the Proposed MEP Amendment Project and Request for Comments on Environmental Issues'' issued on February 11, 2009 in Docket No. CP08–6–002 for the MEP Amendment Project. The Commission staff plans to address the environmental impacts of both the MEP Amendment Project (Docket No. CP08–6–002) and the MEP Expansion Project (Docket No. CP09–56–000) under a single EA document. This notice summarizes and describes currently identified environmental issues for both projects.

This notice announces the opening of the scoping process we[2] will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 23, 2009.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a MEP representative about survey permission and/or the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

MEP proposes expansion and/or equipment modifications at the

[1] On December 30, 2008, MEP filed its amended application for CP08–6–000 with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notice of Amendment on January 12, 2009. On January 29, 2009, MEP filed its application for CP09–56–000 with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The Commission issued its Notice of Application on February 11, 2009.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

previously certificated Lamar Compressor Station in Lamar County, Texas; Atlanta Compressor Station in Cass County, Texas; Perryville Compressor Station in Union Parish, Louisiana; and the expansion and relocation of the previously certificated Vicksburg Compressor Station to Hinds County, Mississippi. Specifically, MEP is proposing to:

- Install one additional G12 compressor unit at the Lamar Compressor Station;
- Substitute two G16 compressor units for the two previously certificated G12 compressor units at Atlanta Compressor Station and remove the compression-capacity cap for the station;
- Increase the land parcel size at the Atlanta Compressor Station from 30.0 acres to 36.7 acres to encompass an adjacent block valve that was certificated under Docket CP08–6–000 for the MEP pipeline;
- Install one additional inlet filter/separator at the Perryville Compressor Station;
- Relocate the previously certificated Vicksburg Compressor Station approximately 3.5 miles to the east from Warren County, Mississippi to Hinds County, Mississippi. The relocation would involve acquiring a new 74.8 acre land parcel; and
- Install one new G12 compressor unit at the new Vicksburg Compressor Station site.

The specific location of the project facilities is shown in Appendix 1.[3]

If approved, MEP proposes to commence construction of the proposed facilities in September 2009.

Land Requirements for Construction

No additional land requirements, beyond what has been previously certificated, for modifications to the Lamar or Perryville Compressor Stations will be required.

The area that would be temporarily affected by construction of the Atlanta Compressor Station would increase over the previously certificated Project by 10.0 acres to a total of approximately 22.0 acres. The area that would be permanently affected by operation of the Atlanta Compressor Station would increase by 1.4 acres to a total of approximately 13.1 acres.

Construction of the Vicksburg Compressor Station would temporarily impact approximately 31.8 acres. Permanent land requirements for the operation of the Vicksburg Compressor Station would impact approximately 20.7 acres.

MEP is proposing to locate the compressor stations adjacent to existing roadways. MEP is proposing to construct access roads between the existing roadways and each area where the compressor station construction activity would occur. MEP would retain a permanent access road for each site after construction is complete.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils.
- Land Use.
- Water Resources, Fisheries, and Wetlands.
- Cultural Resources.
- Vegetation and Wildlife.
- Air Quality and Noise.
- Endangered and Threatened Species.
- Public Safety.

We will also evaluate possible alternatives to the proposed project or portions of the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by MEP. This preliminary list of issues may be changed based on your comments and our analysis.

- Disturbance caused by Project construction may contribute to water and wind erosion of soils.
- Disturbance caused by the Project may result in the temporary and permanent alteration of wildlife habitat.
- Potential impacts on air quality and noise emissions.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the MEP Amendment and Expansion Projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before April 23, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers (CP08–6–002 and CP09–56–000) with your submission. The Commission encourages electronic filing of comments and has dedicated

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own land within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits, if applicable, will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7080 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13234–001]

City and Borough of Sitka

Notice of Request To Use Alternative Procedures in Preparing a License Application

March 24, 2009.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare an original license application.

b. *Project No.:* 13234–001

c. *Date filed:* March 20, 2009

d. *Applicant:* City and Borough of Sitka

e. *Name of Project:* Takatz Lake Hydroelectric Project

f. *Location:* On the Takatz Lake and Takatz Creek, approximately 20 miles east of the City of Sitka, Alaska, on east side of Baranof Island. The project would occupy federal lands within the Tongass National Forest, administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Christopher Brewton, Utility Manager, City and Borough of Sitka, Electric Department, 105 Jarvis Street, Sitka, Alaska 98335, (907) 747–1870, *chrisb@cityofsitka.com*.

i. *FERC Contact:* Joseph Adamson, phone at (202) 502–8085; e-mail at *joseph.adamson@ferc.gov.*

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. The project would consist of a 200-foot-high primary concrete arch dam with spillway and parapet wall that would raise the elevation of the existing lake; 30-foot-high secondary saddle dam; an impoundment with a 740-acre surface area at a full pool elevation of 1,040 feet mean sea level, with an active capacity of 82,000 acre-feet; an approximately 4-mile-long access road; a 2,800-foot-long, 6.5-foot by 7-foot modified unlined horseshoe tunnel fed by an intake into a 72-inch-diameter 1,000-foot-long steel penstock leading to a powerhouse containing two Francis-type generating units, having a total installed capacity of 27,700 kilowatts; an approximately 21-mile-long, 115 kilovolt (kv) or 138 kv transmission line that consists of a combination of submarine, overhead, and underground segments.

l. A copy of the request to use alternative procedures is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. The City and Borough of Sitka has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. The City and Borough of Sitka has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. The City and Borough of Sitka has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on the City and Borough of Sitka's request to use the alternative procedures, pursuant to section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. The City and Borough of Sitka will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

The City and Borough of Sitka has met with federal and state resources agencies regarding the proposed Takatz Lake Hydroelectric Project. The City and Borough of Sitka intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by September 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7079 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–79–000]

Leaf River Energy Center LLC; Notice of Request Under Blanket Authorization

March 24, 2009.

Take notice that on March 10, 2009, Leaf River Energy Center LLC (Leaf River), 53 Riverside Avenue, Westport, Connecticut, 06880, filed in Docket number CP09–79–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Leaf River's blanket certificate issued in Docket number CP08–8–000. Leaf River asked for authorization to construct, own and operate a new natural gas pipeline lateral and associated facilities (Sonat Lateral) that will connect the Leaf River Energy Center, a certificated underground natural gas storage and pipeline header facilities, located in Smith, Jasper and Clarke Counties, Mississippi, with a Southern Natural Gas Company (Sonat) interstate natural gas transmission pipeline in place of the facilities that Leaf River originally proposed for that purpose. Leaf River submitted information supplementing prior notice of proposed construction activity under blanket certificate on March 23, 2009, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The 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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Laura L. Luce, Leaf River Energy Center LLC, 53 Riverside Avenue, Westport, CT 06880, at (203) 557–1000 or at *lluce@ngsenergy.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7081 Filed 3–30–09; 8:45 am]

BILLING CODE

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2008–0827; FRL–8788–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal), EPA ICR Number 0246.10, OMB Control Number 2030–0016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 30, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OARM–2008–0827, to (1) EPA Online using *http://www.regulations.gov* (our preferred method), by e-mail to

oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donna Blanding, Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 564–1130; fax number: (202) 565–2475; e-mail address: *blanding.donna@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On November 13, 2008 (73 FR 67152), 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–OARM–2008–0827, which is available for public viewing at *http://www.regulations.gov,* or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Office of Environmental Information Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Contractor Cumulative Claim and Reconciliation (Renewal).

ICR numbers: EPA ICR No. 0246.10, OMB Control No. 2030–0016.

ICR Status: This ICR is scheduled to expire on April 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those contractors completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 240 minutes 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; 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: All contractors who have completed an EPA cost reimbursement type contract will be required to submit EPA Form 1900–10.

Estimated Number of Respondents: 20.

Frequency of Response: At contract completion.

Estimated Total Annual Hour Burden: 80.

Estimated Total Annual Cost: $8,491 which includes $0 annual capital/startup costs, $240 annual O&M costs, and $8,251 annual labor costs.

Changes in the Estimates: In the last OMB clearance, respondent burden hours were estimated at 32 hours per year. The current estimate is 80 hours per year for an overall increase of 48 hours. The increase in burden from the previous approval is a result of the increased time needed, by the respondents', per action due to the complexity of some of the contracts to be closed out and the timeliness of consulted subcontractors, which often increases the amount of time needed to gather the required information.

Dated: March 25, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–7191 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009; FRL–8787–5]

Guidance on the Development, Evaluation, and Application of Environmental Models

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Document Availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final ''Guidance Document on the Development, Evaluation, and Application of Regulatory Environmental Models,'' EPA/100/K–09/003 (hereinafter ''Models Guidance''). EPA's Council for Regulatory Environmental Modeling (CREM) developed the Models Guidance and its companion product, the ''Models Knowledge Base'' (hereinafter ''Models KBase,'' *http://cfpub.epa.gov/crem/knowledge_base/knowbase.cfm*), to

improve the practices associated with the development, evaluation, and application of models for environmental decision making. Furthermore, by providing access to its tools and methods, EPA increases transparency and can improve the public's understanding of how science is used to make environmental decisions.

While the Models Guidance does not impose legally binding requirements on EPA or the public, it provides recommendations on the principles of good modeling practice, stressing the importance of model quality, documentation, and transparency with the aim of helping to determine when and how a model can be used to inform a decision.

ADDRESSES: The Models Guidance is available electronically through the CREM Web site: *http://www.epa.gov/crem*. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone 1–800–490–9198 or 513–489–8190; facsimile: 301–604–3408; e-mail: *NSCEP@bps-lmit.com*. Please provide your name, mailing address, title, and EPA number (as given above) of the requested publication.

FOR FURTHER INFORMATION CONTACT: Dr. Noha Gaber, Council for Regulatory Environmental Modeling, Office of the Science Advisor, 1200 Pennsylvania Ave, NW., Mail Code: 8105R, Washington, DC 20460; by telephone/voice mail at 202–564–2179; Fax: 202–564–2070; or via e-mail at *gaber.noha@epa.gov*.

SUPPLEMENTARY INFORMATION: To achieve its mission of protecting human health and safeguarding the natural environment, the U.S. Environmental Protection Agency (EPA) often employs mathematical models to study environmental systems and processes. These modeling analyses often provide input for the development of regulatory decisions. EPA established the Council for Regulatory Environmental Modeling (CREM) in 2000 in an effort to improve the quality, consistency and transparency of EPA models. In 2003, the EPA Administrator directed the CREM to provide guidance for the development, assessment, and use of environmental models and to develop a publicly-accessible inventory of EPA's most frequently used models. The Models Guidance and Models KBase were developed in close collaboration with members of the CREM, who represent EPA's program and regional offices. This document represents the consensus view among EPA offices. The Models Guidance was also evaluated and approved by the EPA's Science Policy Council, the Agency's forum for senior level policy deliberation and coordination on significant science issues.

Both the Models Guidance and the Models KBase were issued in draft form in January 2004. In addition to internal review, the CREM products have undergone an external review process through EPA's Science Advisory Board (the report may be found at *http://www.epa.gov/sab/panels/cremgacpanel.html*). The CREM also commissioned the National Academy of Science's (NAS) National Research Council to assess evolving scientific and technical issues related to the selection and use of computational and statistical models in decision making processes at EPA. The NRC report, entitled ''Models of Environmental Regulatory Decision Making,'' was released in 2007 and provides advice on the management, evaluation, and use of models at the EPA. The report may be found at *http://www.nap.edu/catalog.php?record_id=11972*.

A revised draft of the Models Guidance, which built on the recommendations of the Science Advisory Board review panel and the NRC report, was issued for public comment in August 2008.

Dated: March 5, 2009.

Kevin Teichman,

Acting EPA Science Advisor.

[FR Doc. E9–7183 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8787–4]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in May 2009. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html*. MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, send a blank e-mail to *lists-mstrs@lists.epa.gov.*

DATES: Wednesday May 13, 2009 from 9 a.m. to 5 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Loews Madison Hotel, 1177 15th Street, NW., Washington, DC 20005. Phone 202–862–1600. The hotel is located about four blocks from both the Farragut North and McPherson Square Metro stations.

FOR FURTHER INFORMATION CONTACT:

For Technical Information: John Guy, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202–343–9276; e-mail: *guy.john@epa.gov.*

For Logistical and Administrative Information: Ms. Cheryl Jackson, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6405J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; 202–343–9653; e-mail: *jackson.cheryl@epa.gov*.

Background on the work of the subcommittee is available at: *http://www.epa.gov/air/caaac/mobile_sources.html* . Individuals or organizations wishing to provide comments to the subcommittee should submit them to Mr. Guy at the address above by April 24, 2009. The subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Mr. Guy or Ms. Jackson (see above). To request accommodation of a disability, please contact Mr. Guy or Ms. Jackson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 25, 2009.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E9–7177 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8788–1]

Notice of an Underground Injection Control Program Meeting To Discuss Innovative Ideas for Aquifer Storage and Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a meeting.

SUMMARY: The Environmental Protection Agency (EPA) Underground Injection Control Program will be hosting a meeting to discuss innovative ideas for Aquifer Storage and Recovery (ASR) operations that would prevent endangerment of underground sources of drinking water. While ASR may be a valuable tool to support public drinking water supplies, EPA or States with primary enforcement responsibility regulate underground injection activities to protect underground sources of drinking water pursuant to the Safe Drinking Water Act. EPA is assembling an interdisciplinary group of experts to generate ideas regarding the use of ASR technology in a manner that will prevent endangerment of drinking water resources. EPA requests those interested in attending to register at *http://www.horsleywitten.com/EPA–ASR*.

DATES: The ASR Expert Meeting will be held on May 5–6, 2009. The meeting will be two (2) half days (May 5, 1 p.m.–5 p.m., May 6, 8 a.m.–1 p.m.). Registration must be received by April 30, 2009.

ADDRESSES: The meeting will be held in the 12th floor Huron Conference room at the EPA Region 5 Office, 77 W. Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Jyl Lapachin, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0327; fax number (202) 564–3756; e-mail address: *lapachin.jyl@epa.gov*.

SUPPLEMENTARY INFORMATION: Aquifer storage and recovery (ASR) is the term used to describe the practice of underground injection of non-hazardous water with the intent for later recovery as a water management tool. While ASR has the potential to be a valuable tool for ensuring that drinking water supplies are available in times when other sources of drinking water may be unavailable, the underground injection and storage of water has sometimes resulted in adverse ground water quality.

EPA or States with primary enforcement responsibility implement underground injection control programs under the Safe Drinking Water Act to prevent endangerment of underground sources of drinking water. EPA recognizes that ASR can be a viable tool to meet water demands. Therefore, EPA is holding an expert-level meeting with an interdisciplinary group of technical and policy experts from a variety of sectors such as Federal, State, private industry, environmental organizations, academia and public water systems. The meeting objective is to generate innovative ideas and individual input from participants on the storage of water in aquifers (i.e., underground storage areas) for later retrieval in a manner that is protective of underground sources of drinking water. EPA is seeking individual input from the meeting attendees. EPA is not seeking advice, group recommendations or consensus on any matters discussed during the meeting.

The ASR Expert Meeting will begin with short plenary presentations designed to provide the participants with a common knowledge base and terminology to encourage effective and productive discussions. The plenary topics will be broad and address multiple challenges related to ASR including: (1) Current ASR practices; (2) scientific and technical considerations for ASR; and (3) policy considerations for ASR. Interactive discussion sessions will follow the plenary presentation and provide a forum for attendees to communicate and develop creative ideas for protective ASR practices.

Space is limited and EPA expects to be able to accommodate 30 participants. EPA will attempt to accommodate additional registrants as observers. To encourage productive and creative discussion, EPA seeks individuals with significant ASR experience to register for the meeting. Significant ASR experience includes: (1) Whether the individuals have a demonstrated ability to advance ASR knowledge and practices through their work, including, but not limited to, prior presentations at professional conferences or publishing research in peer-reviewed media; (2) whether the individuals have at least five years of experience performing ASR-related work in operations, site characterization, program implementation, research, or system design; and (3) whether the individuals have significant professional experience in managing, supervising, and leading ASR-related projects. EPA's goal is to create discussion groups consisting of a diverse mix of participants with regard to expertise in ASR-related policy, science, and current practices, with the intention of stimulating ideas for creative and novel approaches to ASR management and operations while protecting underground sources of drinking water.

Interested individuals should register for the meeting using the form available at *http://www.horsleywitten.com/EPA–ASR*.

Special Accomodations: Any person needing special accommodations at this meeting, including wheelchair access, should contact Jyl Lapachin at the phone number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the public meeting.

Dated: March 26, 2009.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E9–7184 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8787–7]

Science Advisory Board Staff Office; Request for Nominations of Scientists and Engineers To Augment the Environmental Engineering Committee (EEC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting nominations for scientists and engineers with expertise and direct experience in water infrastructure assessment, rehabilitation, and renewal to augment expertise on the SAB Environmental Engineering Committee (EEC).

DATES: Nominations should be submitted by April 21, 2009 per instructions below.

FOR FURTHER INFORMATION: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9946; by fax at (202) 233–0643 or via e-mail at *hanlon.edward@epa.gov*. General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab*. Any inquiry regarding EPA's Aging

Drinking Water and Wastewater Infrastructure Research Initiative should be directed to Mr. Thomas Speth of EPA's Office of Research and Development (ORD), at *speth.thomas@epa.gov* or (513) 569–7208.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. The SAB EEC provides scientific and technical advice to the EPA Administrator through the chartered SAB on risk management technologies to control and prevent pollution.

In support of EPA's Sustainable Water Infrastructure Initiative, EPA's ORD initiated a research program in 2007 to improve and evaluate innovative technologies and techniques for reducing the cost and improving the effectiveness of operations, maintenance, and replacement of aging and failing systems for drinking water and wastewater treatment and conveyance. The outputs from this research program are intended to assist EPA's program and regional offices to implement Clean Water Act and Safe Drinking Water Act requirements; to help states and tribes meet their programmatic requirements; and to assist utilities to more effectively implement comprehensive management of drinking water and wastewater treatment and conveyance systems, provide reliable service to their customers, and meet their statutory requirements. ORD's 2007 Sustainable Water Infrastructure Initiative research plan proposes work relating to infrastructure condition assessment, system rehabilitation, infusion of advanced design and management concepts, and evaluation of innovative treatment technologies. ORD requested that the SAB review and provide advice on the suitability and appropriateness of completed, existing and upcoming projects; the appropriateness of the funding vehicles; whether additional projects are needed; and the overall scope and funding of the initiative. The SAB EEC, augmented with additional experts, will conduct the consultation.

Request for Nominations

There is a need to supplement EEC expertise with scientists and engineers having experience and expertise with water infrastructure assessment, rehabilitation, and renewal. Accordingly, the SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers in multidisciplinary fields such as microbiology, environmental science, and chemistry; and civil, environmental, chemical, and mechanical engineering. We particularly seek scientists and engineers with specialized expertise in condition assessment, system rehabilitation, and in reducing the cost and improving the effectiveness of operations, maintenance, and replacement of aging and failing drinking water, stormwater, and wastewater treatment and conveyance systems. Also, the SAB Staff Office seeks nominations of individuals with experience in applying this expertise towards municipal infrastructure systems. Qualified nominees will be considered for serving on the EEC augmented with additional expertise to provide advice on EPA's Aging Drinking Water and Wastewater Infrastructure Research Initiative.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the area of science and engineering as described above to be considered for appointment on this SAB Committee. Candidates may also nominate themselves. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested, and should be submitted in time to arrive no later than April 21, 2009.

EPA's SAB Staff Office requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Edward Hanlon, DFO, at the contact information provided above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic.

The SAB Staff Office will acknowledge receipt of the nomination and inform nominees of the Committee for which they have been nominated. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast'') and other sources, the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web site at *http://www.epa.gov/sab* and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis, or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Committee.

For the SAB, a balanced Committee is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Committee, along with information provided by candidates and information gathered by SAB Staff independently concerning the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Committee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Prospective candidates will be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the

U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. Ethics information, including EPA Form 3110–48, is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument*.

Dated: March 24, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–7185 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8787–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; U.S. Colloidal Essence Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for public comments.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Agreement for Recovery of Past Response Costs (''Agreement,'' Region 9 Docket No. 9–2009–08) pursuant to Section 122(h) of CERCLA concerning the U.S. Colloidal Essence Site (the ''Site''), located in Rancho Cucamonga, San Bernardino County, California. The settling party is Walton CWCA Goldenwest 70 LLC. Through the proposed Agreement, the Respondent will reimburse the United States $10,000 for response costs incurred at the Site. The Agreement provides Respondent with a covenant not to sue for past response costs at the Site, and contribution protection. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The administrative record and the Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before April 30, 2009.

ADDRESSES: The proposed Agreement may be obtained from the EPA Region 9 Superfund Records Center, at 95 Hawthorne Street, San Francisco, California 94105 (415) 536–2000. Comments regarding the proposed Agreement should be addressed to Andrew Helmlinger at the U.S. Environmental Protection Agency (ORC–3), 75 Hawthorne Street, San Francisco, California 94105, and should reference the U.S. Colloidal Essence Site Agreement, and Region IX Docket No. 9–2009–08.

FOR FURTHER INFORMATION CONTACT: Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: March 16, 2009.

Keith A. Takata,

Director, Superfund Division.

[FR Doc. E9–7190 Filed 3–30–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

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

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

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 14, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. David E. Carpenter, Iowa City, Iowa; and Nancy A. Leahy, individually and as part of the Leahy Family which consists of Nancy A. Leahy; Timothy J. Leahy; Brian J. Leahy; and Evan G. Leahy; all of Idaho Falls, Idaho; to acquire voting shares of C–B–G, Inc., West Liberty, Iowa, and thereby indirectly acquire voting shares of Community Bank, Muscatine, Iowa, Washington Bancorp, and Federation Bank, both of Washington, Iowa.

Board of Governors of the Federal Reserve System, March 25, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–7045 Filed 3–30–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, April 6, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–7325 Filed 3–27–09; 4:15 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Announcement of an Independent Scientific Peer Review Panel on Alternative Ocular Safety Testing Methods; Availability of Draft Background Review Documents (BRD); Request for Comments

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: NICEATM, in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), announces a public meeting of an independent scientific peer review panel (Panel) on alternative ocular safety testing methods. The Panel will evaluate (1) the validation status of a testing strategy that proposes the use of three *in vitro* test methods to assess the eye irritation potential of antimicrobial cleaning products (AMCPs), (2) the validation status of four *in vitro* test methods for identifying moderate (EPA Category II, UN Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Category 2A) and mild (EPA Category III, GHS Category 2B) ocular irritants and substances not classified as ocular irritants (EPA Category IV, GHS Not Classified), (3) the validation status of the *in vivo* Low Volume Eye Test, and (4) a proposal for the routine use of topical anesthetics, systemic analgesics, and humane endpoints to avoid and minimize pain and distress during *in vivo* ocular irritation testing.

The Panel will review draft ICCVAM summary review documents and draft BRDs and evaluate the extent to which established validation and acceptance criteria have been adequately addressed for each proposed test method and strategy. The Panel also will be asked to comment on the extent to which the information included in the BRDs supports ICCVAM's draft test method recommendations.

NICEATM invites public comments on the draft ICCVAM summary review documents, BRDs, and draft ICCVAM test method recommendations. All documents will be available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/ocutox/PeerPanel09.htm*. Documents will be posted no later than April 1, 2009.

DATES: The meeting is scheduled for May 19–21, 2009, from 8:30 a.m. to 5 p.m. each day. The deadline for registration to attend the meeting and submission of written comments is May 15, 2009.

ADDRESSES: The meeting will be held at the U.S. Consumer Products Safety Commission (CPSC) Headquarters, Bethesda Towers Building, 4330 East West Highway, Bethesda, MD. Persons needing special assistance in order to attend, such as sign language interpretation or other reasonable accommodation, should contact 301–402–8180 (voice) or 301–435–1908 TTY (text telephone) at least seven business days before the event.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709; (telephone) 919–541–2384; (fax) 919–541–0947; (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, NIEHS, 530 Davis Drive, Room 2035, Durham, NC 27713.

SUPPLEMENTARY INFORMATION:

Background

In January 2008, a BRD titled *An In Vitro Approach for EPA Labeling of Anti-Microbial Cleaning Products* was submitted to NICEATM for review. This BRD, prepared by the Institute for *In Vitro* Sciences in collaboration with the Alternative Testing Working Group (comprised of seven consumer product companies [Clorox, Colgate Palmolive, Dial, EcoLabs, Johnson Diversey, Procter and Gamble, and SC Johnson]), describes a testing strategy that uses the Cytosensor Microphysiometer®, EpiOcular™, and Bovine Corneal Opacity and Permeability (BCOP) assays to assess the eye irritation potential of AMCPs and to determine the appropriate EPA ocular hazard classification category. NICEATM and ICCVAM reviewed the BRD, requested additional data and information, and compiled draft recommendations and a draft ICCVAM summary review document. The Panel will first consider the current validation status of each of the three *in vitro* test methods and then consider the validation status of the proposed testing strategy. The Panel will also review the validation status of the *in vivo* Low Volume Eye Test, which is proposed as reference data to partially substantiate the validity of the *in vitro* test methods used in the test strategy.

ICCVAM previously published recommendations on the use of four *in vitro* test methods (the BCOP, the isolated chicken eye test method, the isolated rabbit eye test method, and the hen's egg test-choriallantoic membrane test method) for identifying ocular corrosives and severe irritants for hazard classification and labeling purposes (available at *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_tmer.htm*). The ICCVAM recommendations were submitted to and accepted by ICCVAM member agencies (*http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox/ocu_recommend.htm*). One of the ICCVAM recommendations was to consider the validation status of these four *in vitro* ocular test methods for identifying mild and moderate ocular irritants and substances not classified as ocular irritants. NICEATM and ICCVAM have prepared draft BRDs assessing their current validation status for this purpose/application.

ICCVAM developed draft recommendations for the routine use of topical anesthetics, systemic analgesics, and humane endpoints to avoid or minimize pain and distress during *in vivo* ocular irritation testing. The proposal is based on recommendations by experts at a 2005 symposium *Minimizing Pain and Distress in Ocular Toxicity Testing* (co-sponsored by NICEATM–ICCVAM, the European Centre for the Evaluation of Alternative Methods [ECVAM], and the European Cosmetics Association) [*http://iccvam.niehs.nih.gov/meetings/ocumeet/sympinfo.htm*] that topical anesthetics and systemic analgesics should routinely be administered before ocular testing to avoid or minimize pain and distress that might occur during and after the initial application of test articles. The symposium experts also recommended that systemic analgesics should routinely be administered when there is evidence of potentially painful ocular damage or when there are clinical signs indicative of pain or distress. The experts also identified specific ocular injuries that would not be expected to reverse within 21 days, and therefore could be used as humane endpoints to end a study early. ICCVAM requested data (72 FR 26396) and then compiled available information on using topical anesthetics or systemic analgesics. The Panel will review the available information and comment on draft ICCVAM recommendations for the routine use of analgesics, anesthetics, and humane endpoints.

ICCVAM is also cooperating with ECVAM on the peer review evaluation of four cell-based *in vitro* ocular test methods by an ECVAM Scientific Advisory Committee (ESAC) Peer Review Panel. The four methods, Cytosensor®, Fluorescein Leakage, Neutral Red Release, and the Red Blood

Haemaolysis Test Method, are being evaluated for their usefulness and limitations for identifying ocular corrosives and severe irritants (*i.e.*, EPA Category I, European Union (EU) R41, GHS Category 1) and substances not classified as ocular irritants (*i.e.*, EPA Category IV, EU Not Labeled, GHS Not Classified). ECVAM prepared BRDs for the four methods and links to these documents will be available on the ICCVAM Web site by April 1, 2009. ICCVAM developed draft recommendations on the usefulness and limitations of the four test methods based on the information in the BRDs. Public comments on the BRDs and draft recommendations are invited. The Panel will also be asked to comment on the ICCVAM draft recommendations.

Peer Review Panel Meeting

This meeting will take place May 19–21, 2009, at the CPSC Headquarters, Bethesda Towers Building, 4330 East West Highway, Bethesda, MD. It will begin at 8:30 a.m. and is scheduled to conclude each day at approximately 5 p.m. The meeting is open to the public at no charge, with attendance limited only by the space available. The Panel will consider the draft ICCVAM summary review documents and/or BRDs for each test method and evaluate the extent to which established validation and acceptance criteria are adequately addressed (as described in *Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods*, NIH Publication No. 97–3981, available at *http://iccvam.niehs.nih.gov/docs/about_docs/validate.pdf*). The Panel will then comment on the extent to which each of the draft ICCVAM test method recommendations is supported by the information provided in the corresponding draft BRD(s). The Panel is expected to review the test methods and testing strategy for labeling AMCPs first, followed by the four test methods used to identify mild and moderate irritants, and finally the use of anesthetics, analgesics, and humane endpoints when conducting *in vivo* eye irritation tests in rabbits.

Additional information about the meeting, including a roster of the Panel members and the draft agenda, will be posted on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/methods/ocutox/PeerPanel09.htm*) two weeks before the meeting. This information will also be available after that date by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

Attendance and Registration

In order to facilitate planning for this meeting, persons wishing to attend are asked to register by May 15, 2009, via the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/contact/reg_form_OcuPanel.htm*). Visitor information, area map, driving directions, and CPSC contact information are available at *http://www.cpsc.gov/about/contact.html*.

Availability of the Documents

The draft summary review documents, draft BRDs, and draft ICCVAM test method recommendations will be posted no later than April 1, 2009, on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/methods/ocutox/PeerPanel09.htm*), or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

Request for Public Comments

NICEATM invites the submission of written comments on the draft ICCVAM summary review documents, draft BRDs, and draft ICCVAM test method recommendations by May 15, 2009. NICEATM prefers that comments be submitted electronically via the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm*) or via e-mail to *niceatm@niehs.nih.gov*. Written comments may also be sent by mail, fax, or email to Dr. William Stokes, Director, NICEATM, at the address listed above (see **FOR FURTHER INFORMATION CONTACT**). When submitting written comments, please refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, email, and sponsoring organization, if applicable). NICEATM will post all comments on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*) identified by the individual's name and affiliation or sponsoring organization (if applicable). NICEATM will provide these comments to the Panel and ICCVAM agency representatives and make them available to the public at the meeting.

Opportunity will be provided for members of the public to present oral comments at designated times during the peer review. Up to seven minutes will be allotted per speaker. If you wish to present oral statements at the meeting (one speaker per organization), contact NICEATM (see **FOR FURTHER INFORMATION CONTACT** above) by May 15, 2009. Please provide a written copy of your comments with contact information (name, affiliation, mailing address, phone, fax, email, and sponsoring organization, if applicable) when registering to make oral comments. If it is not possible to provide a copy of your statement in advance, please bring 40 copies to the meeting for distribution to the Panel and to supplement the record. Written statements can supplement and expand the oral presentation. Please provide NICEATM with copies of any supplementary written statement using the guidelines outlined above.

Summary minutes and the Panel's final report will be available following the meeting on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*). ICCVAM will consider the Panel's conclusions and recommendations and any public comments received in finalizing their test method recommendations for these methods.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on their Web site (*http://iccvam.niehs.nih.gov*).

Dated: March 20, 2009.

John R. Bucher,

Associate Director, NTP.

[FR Doc. E9–7220 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow information collection related to implementation of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26, in: ''Patient Safety Organization Certification for Initial Listing and Related Forms and a Patient Safety Confidentiality Complaint Form.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 27, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 30, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQs Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Patient Safety Organization Certification for Initial Listing and Related Forms and a Patient Safety Confidentiality Complaint Form.''

The Department of Health and Human Services' (HHS) Agency for Healthcare Research and Quality (AHRQ) has been delegated the authority to implement the provisions of the Patient Safety and Quality Improvement Act of 2005 (for brevity referenced here as the Patient Safety Act) that call for submission to the Secretary of certifications by entities seeking to become listed by the Secretary as Patient Safety Organizations (PSOs). These entities must certify that they meet or will meet specified statutory criteria and requirements for PSOs as further explained in the final rule to implement the Patient Safety Act, published in the **Federal Register** on November 21, 2008: 73 FR 70732.

The HHS Office for Civil Rights (OCR) has been delegated the authority to enforce the provisions of the Patient Safety Act that mandate confidentiality of ''patient safety work product.'' This term is defined in the statute, at 42 U.S.C. 299b–21(7), and further explained in the final rule (published in the **Federal Register** on November 21, 2008). Individuals may voluntarily submit complaints to OCR if they believe that an individual or organization in possession of patient safety work product unlawfully disclosed it.

Methods of Collection

While there are a number of information collection forms described below, they will be implemented at different times, some near the end of the three year approval period for these standard forms. The forms for certifications of information will collect only the minimum amount of information from entities necessary for the Secretary to determine compliance with statutory requirements for PSOs, i.e., most of the required certification forms will consist of short attestations followed by ''yes'' and ''no'' checkboxes to be checked and initialed.

PSO Certification for Initial Listing and PSO Certification for Continued Listing Forms

The Patient Safety Act, at 42 U.S.C. 299b–24(a), and the final rule at 45 CFR 3.102 provide that an entity may seek an initial three-year listing as a PSO by submitting an initial certification that it has policies and procedures in place to perform eight patient safety activities (enumerated in the statute and the final rule), and that it will comply, upon listing, with seven other statutory criteria. The proposed Certification for Initial Listing Form also includes additional questions related to other requirements for listing related to eligibility and pertinent organizational history. Similarly, the proposed Certification for Continued Listing Form (for each successive three-year period after the initial listing period) would require certifications that the PSO is performing, and will continue to perform, the eight patient safety activities, and is complying with, and will continue to comply with, the seven statutory criteria. The average annual burden in the first three years of 17 hours per year for the collection of information requested by the certification form for initial listing is based upon a total average estimate of 33 respondents per year and an estimated time of 30 minutes per response. Information collection, i.e., collection of initial certification forms, will begin as soon as the forms are approved for use. The average annual burden in the first three years of 8 hours per year for the collection of information requested by the certification form for continued listing is based upon a total average estimate of 17 respondents per year and an estimated time of 30 minutes per response. Collection of forms for continued listing will not begin until several months before November 2011 which is three years after the first PSOs were listed by the Secretary. (See Note after Exhibit 1.)

PSO Two Bona Fide Contracts Requirement Certification

To implement 42 U.S.C. 299b–24(b)(1)(C), the final rule states that, in order to maintain its PSO listing, a PSO will be required to submit a certification, at least once in every 24-month period after its initial date of listing, indicating that it has contracts with two providers (45 CFR 3.102(d)(1)). The annualized burden of 8 hours for the collection of information requested by the two bona fide contracts requirement is based upon an estimate of 33 respondents per year and an estimated 15 minutes per response. This collection of information will begin when the first PSO timely notifies the Secretary that it has entered into two contracts.

PSO Disclosure Statement Form

The Patient Safety statute at 42 U.S.C. 299b–24(b)(1)(E) requires a PSO to fully disclose information to the Secretary if the PSO has additional financial, contractual, or reporting relationships with any provider to which the PSO provides services pursuant to the Patient Safety Act under contract, or if the PSO is managed or controlled by, or is not operated independently from, any of its contracting providers. Disclosure Statement Forms will be collected only when a PSO has such relationships with a contracting provider to report. The Secretary is required to review each disclosure statement and make public findings as to whether a PSO can fairly and accurately carry out its

responsibilities. AHRQ assumes that only a small percentage of entities will need to file such disclosure forms. However, AHRQ is providing a high estimate of 17 respondents annually and thus presumably overestimating respondent burden. In summary, the annual burden of 8 hours for the collection of information requested by the disclosure form is based upon the high estimate of 17 respondents per year and an estimated 30 minutes per response. This information collection will begin when a PSO first reports having any of the specified types of additional relationships with a health care provider with which it has a contract to carry out patient safety activities.

PSO Information Form

Annual completion of a PSO Information Form will be voluntary and will provide information to HHS on the type of healthcare settings that PSOs are working with to carry out patient safety activities. This form is designed to collect a minimum amount of data in order to gather aggregate statistics on the reach of the Patient Safety Act with respect to types of institutions participating and their general location in the United States. This information will be included in AHRQ's annual quality report, as required under Section 923(c) of the Patient Safety Act (42 U.S.C. 299b–23(c)). No PSO-specific data will be released without PSO consent. The overall annual burden estimate of 17 hours for the collection of information requested by the PSO Information Form is based upon an estimate of 33 respondents per year and an estimated 30 minutes per response. This information collection will begin one year after the first PSOs are listed by the Secretary.

OCR Complaint Form

The complaint form will collect from individuals only the minimum amount of information necessary for OCR to process and assess incoming complaints. The overall annual burden estimate of 17 hours for the collection of information requested by the underlying form is based upon an estimate of 50 respondents per year and an estimated 20 minutes per response. OCR's information collection using this form will not begin until after there is at least one PSO receiving and generating patient safely work product, and there is an allegation of a violation of the statutory protection of patient safety work product.

All Administrative Forms

The overall maximum anticipated annual burden estimate is 75 hours for all the above described collections of information. Because the forms filled out by PSOs vary over each of their first three years, the table below includes three-year total estimates divided by three to arrive at an annual estimate of burden hours. (See below.)

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Certification for Initial Listing Form	100/3	1	30/60	17
Certification for Continued Listing Form*	50/3	1	30/60	8
Two Bona Fide Contracts Requirement Form**	100/3	1	15/60	8
Disclosure Statement Form	50/3	1	30/60	8
Information Form***	100/3	1	30/60	17
Patient Safety Confidentiality Complaint Form	150/3	1	20/60	17
Total****	500/3	na	na	75

Note: * The Certification for Continued Listing Form will be completed by any interested PSO at least 75 days before the end of its then-current three-year listing period. Therefore, we anticipate that only those PSOs that have completed the Certification for Initial Listing Form in the first year that these forms are available will complete the Certification for Continued Listing Form during the three-year approval period for these forms. In the out-years, we expect the number of PSOs to remain stable, with the number of new entrants offset by the number of entities that will relinquish their status or be revoked.

** The Two Bona Fide Contracts Requirement Form will be completed by each PSO within the 24-month period after initial listing by the Secretary.

*** The Information Form will collect data by calendar year, beginning in 2010, at a time when it is anticipated that PSOs will have submitted appreciable data to the Network of Patient Safety Databases.

**** A total of 100 PSOs are expected to apply over three years: 50 in year one; 25 in year two; and 25 in year three. Disclosure Statement, Two Bona Fide Contracts Requirement, and even voluntary Information Forms may be submitted by individual PSOs in different years. OCR is anticipating considerable variation in the number of complaints per year. Hence we have expressed the total for each year as the average of the expected total over the three year collection period.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form	Number of respondents	Total burden hours	Average hourly wage rate*	Total burden cost
Certification for Initial Listing Form	100/3	17	$31.26	$531.42
Certification for Continued Listing Form	50/3	8	31.26	250.08
Two Bona Fide Contracts Requirement Form	100/3	8	31.26	250.08
Disclosure Statement Form	50/3	8	31.26	250.08
Information Form	100/3	17	31.26	531.42
Patient Safety Confidentiality Complaint Form	150/3	17	31.26	531.42
Total	500/3	75	na	2,344.50

* Based upon the mean of the hourly wages for healthcare practitioner and technical occupation, National Compensation Survey: Occupational wages in the United States 2007, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

a. AHRQ

By statute, AHRQ must collect and review certifications from an entity that seeks listing or continued listing as a PSO under the Patient Safety Act. Additional information collection is also required for entities to remain listed as a PSO (i.e., submissions regarding compliance with the two bona fide contracts requirement and reports of certain relationships between a PSO and each of its contracting providers). The cost to AHRQ of processing the information collected with the above-described forms is minimal: An estimated equivalent of approximately 0.05 FTE or $7,500 per year and virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

b. OCR

OCR cannot conduct its work without collecting information through its proposed complaint forms. Even if OCR did not use complaint forms and only took information orally, it would still have to capture the same information in order to begin processing a complaint. Therefore, the incremental cost to OCR of processing the information collected from the complaint form is minimal and is equivalent to approximately 0.05 FTE or $7,500 per year with virtually no new overhead costs.

Description	Amount
Personnel & Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the above-described AHRQ and OCR information collection to implement the Patient Safety Act are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 18, 2009.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. E9–6955 Filed 3–30–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''CAHPS Field Test of Proposed Health Information Technology Questions and Methodology.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 1, 2009.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''CAHPS Field Test of Proposed Health Information Technology Questions and Methodology''

The Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program is a multi-year initiative of the Agency for Healthcare Research and Quality. AHRQ first launched the program in October 1995 in response to concerns about the lack of good information about the quality of health plans from the enrollees' perspective. Numerous public and private organizations collected information on enrollee and patient satisfaction, but the surveys varied from sponsor to sponsor and often changed from year to year. The CAHPS® program was designed to:

- Make it possible to compare survey results across sponsors and over time; and
- Generate tools and resources that sponsors can use to produce understandable and usable comparative information for consumers.

Over time, the program has expanded beyond its original focus on health plans to address a range of health care services and meet the various needs of health care consumers, purchasers, health plans, providers, and policymakers. Based on the literature review and an assessment of currently available survey instruments, AHRQ identified the need to develop a new health information technology module of the CAHPS® survey. The intent of the planned module is to examine in greater detail than previously patients' perspective on health information technology use by their health care professionals. The intent of the new module is to provide information to clinicians, group practices, health plans, and other interested parties regarding the impact of the use of health information technology on patients' experiences with care. The set of questions about health information technology will be tested as a part of CAHPS® Clinician & Group Survey, Adult Primary Care Questionnaire.

This study, funded through cooperative agreements with RAND and Harvard, is being conducted pursuant to AHRQ's statutory authority to conduct research and evaluations on health care and systems for the delivery of such care, including activities with respect to (1) the quality, effectiveness, efficiency, appropriateness and value of health care services and (2) health care

technologies, facilities and equipment. See 42 U.S.C. 299a(a)(1) and (5).

This study is a one-time field test to be conducted in calendar year 2009. The field test to be conducted under this request will be done for the following purposes:

a. Analysis of revised item wording—Assess candidate wordings for survey items

b. Mode Analysis—Evaluate the equivalence of items administered by mail, telephone, and internet; compare the characteristics and responses of respondents who complete the survey by different modes of administration.

c. Case mix adjustment analysis—Evaluate variables that need to be considered for case mix adjustment of scores.

d. Psychometric Analysis-Provide information for the revision and shortening of questionnaires based on the assessment of the reliability and validity of survey items and composites.

The end result will be a data collection related to the assessment of patients' perspective on how well health information technology is being used by health care professionals. The field testing will ensure that the future data collection yields high quality data and to ensure a minimization of respondent burden, increase agency efficiency, and improve responsiveness to the public. The survey items will be added to currently available CAHPS® surveys and will provide a venue to clinicians and practitioners to verify the quality of their services.

Method of Collection

Respondents will be selected from four purposively chosen sites (health care providers and health insurance plans) that have implemented health information technology systems, such as electronic health records (EHRs) and electronic prescription refills, that are used by sufficient numbers of enrollees (*i.e.*, at least 2400 enrollees per site). From each site the potential respondent universe will be patients who have been receiving care from a clinician at the health provider for at least one year prior to the survey and who have used one or more features of the health providers' EHR system. EHR systems managers have the ability to track which patients log on to the system, and which features (*e.g.*, examine lab results, request prescription refill, etc.) the patients used. The sample selection at each site will be carried out jointly by senior leadership at the site (*e.g.*, chief information officer) and a survey vendor experienced in conducting the CAHPS survey. We will ask the sites to provide a list of their enrollees who have seen a provider in the last 12 months and who have logged onto the EHR system in the last 12 months. We will randomly select a sample of these enrollees for the field test. We will use common statistical techniques to select the sample, *e.g.*, computerized random number generation applied to a list of enrollees. When possible, we will stratify the enrollees at a site based on extent of HIT exposure to ensure a mix of different enrollees in the study (*e.g.*, enrollees who use many HIT functions versus those who use few HIT functions). Institutional Review Boards (IRBs) at Harvard and RAND evaluated the study to ensure proper protection of patients' right to privacy and confidentiality as well as avoidance of harm. The study received approvals from both IRBs.

The draw will be a sample large enough to yield approximately 4,800 respondents.

Because we are assuming a 50% response rate, we will draw approximately 9,600 patients to achieve our total of 4,800 respondents.

Sites to be selected will meet the following requirements:

- As much geographic distribution as possible
- Substantial number of patients with exposure to health information technology

We anticipate a mixed mail-telephone mode of data collection which will include the following steps:

- Mailing an advance notification letter
- Mailing of the questionnaire and cover letter
- Postal card reminder
- A second mailing of the questionnaire to non-respondents
- Minimum of six telephone calls to every mail non-respondent approximately two weeks after the final mailing to complete a telephone interview

We will also administer the survey by Internet to some of the study participants. For those assigned to Internet administration an e-mail invitation will be sent that includes an invitation to participate along with a URL link to a Web-based survey hosted on a secure server. Sites will be divided between RAND's Survey Research Group and the Center for Survey Research, University of Massachusetts, Boston (CSR). RAND will use the software CfMC to administer the survey, while CSR will use Snap software.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this data collection. The CAHPS® Clinician & Group Survey, Adult Primary Care Questionnaire will be completed by about 4,800 persons. The estimated response time of 20 minutes is based on the written length of the survey and AHRQ's experience with previous CAHPS® surveys of comparable length that were fielded with a similar, although not identical, population. The total burden hours are estimated to be 1,600 hours.

Exhibit 2 shows the respondents' cost burden associated with their time to participate in this data collection. The total cost burden is estimated to be $31,296.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
CAHPS® Clinician & Group Survey, Adult Primary Care Questionnaire	4800	1	20/60	1600
Total	4800	1	na	1600

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
CAHPS® Clinician & Group Survey, Adult Primary Care Questionnaire	4800	1600	$19.56	$31,296
Total	4800	1600	na	31,296

* Based upon the average wages, ''National Compensation Survey: Occupational Wages in the United States, May 2007,'' U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the Federal Government for developing the Health Information Technology questions, and testing them within the CAHPS® Clinician & Group Survey, Adult Primary Care Questionnaire, is $780,000, including the cost of reviewing the literature, conducting focus groups and cognitive interviews, field testing the instrument, analyzing the data, finalizing the survey, preparing reports, writing papers for journal submission, and project management (see Exhibit 3). Data collection will not exceed one year.

EXHIBIT 3—ESTIMATED ANNUAL COST

Cost component	Total cost
Review of literature	$35,000
Focus groups	60,000
Cognitive interviews	80,000
Field test	260,000
Data analyses	80,000
Finalize survey	50,000
Preparation of reports and journal papers	85,000
AHRQ project management	130,000
Total	$780,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ' s estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for 0MB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 20, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–6956 Filed 3–30–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–09BH]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assessing the Safety Culture of Underground Coal Mining—New—National Institute for Occupational Safety and Health, (NIOSH), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research would relate to occupational safety and health problems in the coal mining industry. In recent years, coal mining safety has attained national attention due to highly publicized disasters. Despite these threats to worker safety and health, the U.S. relies on coal mining to meet its electricity needs. For this reason, the coal mining industry must continue to find ways to protect its workers while maintaining productivity. One way to do so is through improving the safety culture at coal mines. In order to achieve this culture, operators, employees, the inspectorate, etc. must share a fundamental commitment to it as a value. This type of culture is known in other industries as a ''safety culture'' and can be defined as the characteristics of the work environment, such as the norms, rules, and common understandings that influence facility personnel's perceptions of the importance that the organization places on safety.

NIOSH proposes an assessment of the current safety culture of underground coal mining in order to identify recommendations for promoting and ensuring the existence of a positive safety culture across the industry. A total of 6 underground coal mines will be studied for this assessment. The assessment includes the collection of data using several diagnostic tools:

functional analysis, structured interviews, behavioral observations, and surveys. The functional analysis will involve the review of documents and discussions with mine staff in order to gain an understanding of the organizations' intent with regard to the behaviors that contribute to safety culture. After the functional analysis has been conducted, interviews with different positions across the organization will be conducted. The interviews will provide information about the employees' perceptions regarding the values of the organization with regard to the behaviors important to safety. At the end of the interview, interviewees will be asked to complete 4 behavioral anchored rating scales on topics discussed during the interview. This tool provides the interviewee with another way to express their opinions and attitudes about some of the behaviors important to safety culture. Additionally, behavioral observations will be conducted of activities such as shift turnovers, training, meetings, and responses to events to gain an understanding of the organization's behaviors in real time. Finally, an anonymous survey will be administered which provides a quantitative and objective way of collecting information about the organizational behaviors important to safety culture.

The use of multiple methods to assess safety culture is a key aspect to the methodology. After all of the information has been gathered, a variety of statistical and qualitative analyses are conducted on the data to obtain conclusions with respect to the mine's safety culture. The results from these analyses will be presented in a report describing the status of the behaviors important to safety culture at that mine.

This project will provide recommendations for the enactment of new safety practices or the enhancement of existing safety practices across the underground coal mining industry. This final report will present a generalized model of a positive safety culture for underground coal mines that can be applied at individual mines. In addition, all study measures and procedures will be available for mines to use in the future to evaluate their own safety cultures.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Phase	Number of respondents	Number of responses per respondent	Average urden per esponse (in hours)	Total burden (in hours)
Survey; year one	500	1	20/60	167
Interviews, year one	100	1	1	100
Survey; year two	400	1	20/60	133
Interviews, year two	80	1	1	80
Total				480

Dated: March 25, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–7171 Filed 3–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Public Health Informatics (BSC, NCPHI)

Correction: The notice was originally published in the **Federal Register** on February 25, 2009 (Volume 74, Number 36)] [page 8546] *http://edocket.access.gpo.gov/2009/E9–4001.htm*. The matters to be discussed should read as follows:

Matters to be Discussed: To discuss BSC, NCPHI-related matters including: the Stimulus package; update on BioSense; re-formation of three working groups; and planning for the May 26, 2009 meeting in Orlando, Florida. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Dr. Scott McNabb, National Center for Public Health Informatics, CDC, 1600 Clifton Road, NE., (E–78), Atlanta, Georgia 30333, Telephone (404) 498–6427, Fax (404) 498–6235.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7166 Filed 3–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Diagnosis and Treatment of Hereditary Hemochromatosis, Potential Extramural Project (PEP) 2009–R–04

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 2 p.m.–4 p.m., May 18, 2009 (Closed)

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Diagnosis and Treatment of Hereditary Hemochromatosis, PEP 2009–R–04.''

For Further Information Contact: Linda L. Shelton, Public Health Analyst, Coordinating Center for Health and Information Service,

Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7225 Filed 3–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families the authority vested in the Secretary of Health and Human Services with authority to re-delegate to the Director of the Office of Refugee Resettlement, the following authority vested in the Secretary under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457,22 U.S.C. 7105.

Authority Delegated

1. Authority to provide interim assistance to children who may have been subjected to a severe form of trafficking and to conduct activities related to eligibility letters under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, section 212(a)(2), 22 U.S.C. 7105, as amended. In exercising the authority to conduct activities related to eligibility letters, personnel in the Administration for Children and Families will consult with the Attorney General, the Secretary of Homeland Security and nongovernmental organizations with expertise on victims of trafficking.

2. Authority to train Federal staff and State and local officials to improve identification and protection for trafficking victims under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, section 212(b)(1) and (2), 22 U.S.C. 7105, as amended.

I hereby affirmed and ratified any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Limitations

1. This delegation shall be exercised under the Departments existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

Effective Date

This delegation of authority is effective on date of signature.

Dated: March 23, 2009.

Charles E. Johnson,

Acting Secretary, Department of Health and Human Services.

[FR Doc. E9–6958 Filed 3–30–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families, with authority to re-delegate to the Director of the Office of Refugee Resettlement, the following authority vested in the Secretary under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 Public Law 110–457 § 235, amended.

Authority Delegated

Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(a)(1) to work in conjunction with the Secretary of Homeland Security, the Secretary of State, and the Attorney General, to develop policies and procedures to ensure that unaccompanied alien children (UAC) are safely repatriated to their country of nationality or of last habitual residence.

2. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(a)(5)(A) to work in conjunction with the Secretary of State and the Secretary of Homeland Security, nongovernmental organizations, and other national and international agencies and experts, to create a pilot program to develop and implement best practices for the repatriation and reintegration of UAC.

3. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(b)(1) to provide care and custody of all UAC, except as otherwise provided under § 235(a), including responsibility for their detention, where appropriate.

4. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(b)(4) to develop age determination procedures in consultation with the Secretary of Homeland Security.

5. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(1) to establish policies and programs to ensure that UAC are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful or exploitative activity.

6. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(2) to place an unaccompanied alien child in the least restrictive setting that is in the best interest of the child. In making such placements, personnel in the Administration for Children and Families may consider danger to self, danger to the community, and risk of flight. Concerning placements in a secure facility, the personnel in the Administration for Children and Families shall review the placements, at a minimum, on a monthly basis to determine if such placements remain warranted. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minors (URM) program, pursuant to section 4 12(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)).

7. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(3)(A) to place an unaccompanied alien child with a custodian upon determining that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child and an independent finding that the custodian has not engaged in any activity that would pose a potential risk to the child.

8. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(3)(B) to conduct a home study for a child who is a victim of a severe

form of trafficking in persons, a special needs child with a disability, a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.

9. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(3)(B) to conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted, and to conduct follow-up services for those UAC with mental health or other needs.

10. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(4) to cooperate with the Executive Office for Immigration Review (EOIR) to ensure that custodians of UAC receive legal orientation presentations provided through the Legal Orientation Program administered by EOIR.

11. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(5) to ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that UAC who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in § 235(a)(2)(A), have counsel. To the greatest extent practicable, personnel in the Administration for Children and Families shall make every effort to use the services of pro bono counsel who agree to provide representation to such UAC without charge.

12. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(c)(6) to appoint independent child advocates for child trafficking victims or other vulnerable UAC.

13. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(d)(1) to specifically consent to juvenile court jurisdiction for an unaccompanied alien child who is applying for special immigrant status pursuant to 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1 101(a)(27)(J)) and who is in the custody of the Secretary.

14. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(d)(4)(A) to make eligible for placement and services under a URM program pursuant to § 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) children granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) and who were either in the custody of the Secretary or who were receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) at the time a dependency order was granted.

15. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 235(e) to train Federal personnel, and upon request, State and local personnel, who have substantive contact with UAC.

I hereby affirmed and ratified any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Limitations

1. This delegation shall be exercised under the Departments' existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

Effective Date

This delegation of authority is effective on date of signature.

Dated: March 23, 2009.

Charles E. Johnson,

Acting Secretary, Department of Health and Human Services.

[FR Doc. E9–6959 Filed 3–30–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Cell Based Immunotherapy

Description of Technology: The invention hereby offered for licensing is in the field of Immunotherapy and more specifically in therapy of autoimmune diseases such as Type I diabetes, multiple sclerosis, rheumatoid arthritis and systemic lupus erythematosis and immune mediated allergies such as asthma as well as in transplantation-related disorders, such as graft acceptance and graft-versus-host-disease (GVHD).

While the role of FOXP3$^+$ regulatory T cells (Tregs) in the maintenance of self-tolerance and immune homeostasis has been established and thus their use in adoptive immunotherapy has been contemplated, there is still no good way to purify and expand these cells in an efficient and reproducible manner ex vivo for use in human therapy. The subject invention provides a method that allows such purification for use in expansion cultures to generate sufficient numbers of cells and purity for cell-based immunotherapy. The method is based on the finding that Tregs selectively express Latency Associated Peptide (LAP) and CD121b (IL–1 Receptor Type 2) and on the ability to selectively separate these cells from other immune cells that are potentially hazardous, through the use of magnetic particles which specifically bind to either one of these two surface molecules and selectively separate those cells from the non-Tregs.

Applications:

Immunotherapy, primarily for autoimmune diseases such as Type I diabetes, hematologic disorders such as aplastic anemia, transplantation-related disorders, such as graft acceptance and graft-versus-host-disease (GVHD) and allergic diseases such as asthma.

Facilitating detailed studies and analysis of human Treg function in health and disease.

Assay to differentiate thymic-derived versus peripheral-derived FOXP3+ Tregs.

Potential assay to monitor disease status, progression and prognosis such as early detection or response to therapy of GVHD after transplantation, solid organ graft rejection post-transplantation or a flare-up of systemic lupus erythematosus.

Advantages: The method of purification of FOXP3+ Tregs for human treatment may be superior in efficiency and practicality than currently existing techniques. After the magnetic separation, the final product contains more than 90% fully functional FOXP3+ Tregs. This novel protocol should facilitate the purification of Tregs for both cell-based therapy as well as for detailed studies of human Treg function in health and disease. It is important to note that most of the treatments for specific autoimmune diseases (i.e. hormone replacement therapy, enzyme replacement therapy, corticosteroids, NSAIDs, plasmaphereses, immunosuppressants and intravenous immunoglobulins) do not constitute cure for the specific diseases. Immunotherapy with Tregs has a potential to provide cure or prolonged remission for many of these diseases.

Development Status: The purification protocol has been proven simple and efficient in a laboratory setting.

Market: As indicated above the technology may be applied to allergies and many human diseases that are characterized by diminished frequency or dysfunction of Tregs, including systemic lupus erythematosus (SLE), type 1 diabetes, multiple sclerosis, aplastic anemia, idiopathic thrombocytopenic purpura, graft-versus-host disease (GVHD) and transplant rejection etc. As noted above treatment with Tregs may have a potential to provide cure to many of these diseases, thus collectively, the commercial market opportunities for the technology are wide-ranging and the contribution to public health may be highly significant.

The following information provides further detail concerning the potential market size for therapeutic use of Tregs:

• As a group, autoimmune diseases afflict millions of Americans. While individually not very common, with the exception of thyroid disease, diabetes and systemic lupus erythematosus (SLE), taken as a whole, autoimmune diseases represent the fourth largest cause of disability among women in the United States. According to the National Women's Health Centre, 75% of cases of autoimmune diseases occur in American women.

• Similarly, Type 1 Diabetes is the second most common chronic disease in children after asthma. About 13,000 new cases are diagnosed in the U.S. alone each year. Patients with Type 1 Diabetes make up about 5% to 10% of all cases of diabetes. It most commonly appears in girls and boys when they are fourteen years old.

• Multiple sclerosis is a chronic disease that starts early in life and as many as 400,000 patients are afflicted with this disease which lasts for decades.

• More than 19,000 transplants are performed in the United States each year. That equates to 1,583 per month, 365 per week, 52 per day, and 2 per hour for a rate of approximately 1 in 14,315 or 0.01% of the U.S population.

Inventors: Dat Q. Tran and Ethan M. Shevach (NIAID).

Publications:

1. J Andersson, DQ Tran, M Pesu, TS Davidson, H Ramsey, J O'Shea, EM Shevach. CD4+Foxp3+ regulatory T cells confer infectious tolerance in a TGFβ-dependent manner. J Exp Med. 2008 Sep 1;205(9):1975–1981.

2. EM Shevach, DQ Tran, TS Davidson, J Andersson. The critical contribution of TGF-beta to the induction of Foxp3 expression and regulatory T cell function. Eur J Immunol. 2008 Apr;38(4):915–917.

3. DQ Tran, R Ramsey, EM Shevach. Induction of FOXP3 expression in naïve human CD4+FOXP3- T cells by T cell receptor stimulation is TGFβ-dependent but does not confer a regulatory phenotype. Blood. 2007 Oct 15;110(8):2983–2990.

Patent Status: U.S. Provisional Application No. 61/090,788 filed 21 Aug 2008 (HHS Reference No. E–312–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov*; John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID/NIH Laboratory of Immunology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of CD121b or LAP to produce a Treg product for cell-based immunotherapy. Please contact Nicole Mahoney at 301–435–9017 for more information.

Compositions and Methods for Inhibiting and Treating Herpes Simplex Virus (HSV) Infection and HSV–1 Containing a UL3 Deletion

Description of Technology: The invention offered hereby for licensing is in the fields of viral and cancer therapeutics and in particular related to Herpes Simplex Virus. It is based on the finding that Protein Disulfide Isomerase (PDI) family members bind in vitro to the herpes simplex protein UL3 and that HSV entry to the host cell is mediated through HSV's interaction with the host cell's surface protein(s) belonging to PDI family members. Inhibition of virus entry can therefore be accomplished by inhibitors of the PDI protein family members. The inventors demonstrated the following:

• A small molecule such as 5,5'-Dithiobis(2-nitro-benzoic acid) (DTNB) can block HSV infection by blocking PDI-like activity.

• Anti-PDI antibodies can block HSV infection.

• Disulfide Isomerase family members bind in vitro to the herpes simplex protein UL3.

Accordingly, the inventors further suggest that a UL3-like peptide or its analogues and derivatives can be effective as inhibitors of HSV infection.

The invention further provides for methods and kits to screen for new inhibitors, based on the entry mechanism mentioned above.

In another aspect of the invention, it is proposed that such PDI inhibitors or binding proteins can potentially serve as antitumor agents based on the finding that cancer cells express increased levels of PDI compared to healthy cells.

With respect to cancer therapeutics, the invention further claims a recombinant mutant herpes simplex virus devoid of the capability to express UL3 or expressing a mutant HSV UL3 protein. Such a virus can serve as an oncolytic virus for treatment of cancer.

Applications:

• Antiviral therapeutics.

• Anticancer therapeutics.

• Screening for new antiviral and anticancer agents.

• Developing of Oncolytic Viruses for cancer therapy.

Advantages: Herpes Simplex Viruses are responsible for a wide range of human diseases. Herpes simplex virus is the causative agent of oral and genital herpes, and is associated with sexual transmission. Infections with herpes simplex can be acute, or latent with recurring periodic outbreaks. An infection by herpes simplex is marked by watery blisters in the skin or mucous membranes of the mouth, lips or

genitals that can be painful and thus can severely affect the quality of life of an infected individual. The virus can lead to potentially fatal infections in babies whose mothers are infected, and to permanent neurological damage in adults with herpes encephalitis. The virus may also play a role in the spread of HIV as it can make people more susceptible to HIV infection.

In spite of the severity of diseases caused by HSV and in spite of the many years of efforts to develop effective anti-HSV medications and vaccines, there is still no effective cure for herpes in existence. The existing antiviral medications such as *Acyclovir, Valacyclovir* and *Famciclovir* that work by inhibiting the virus' DNA synthesis (targeting the enzyme DNA Polymerase) cannot eradicate the virus from the body, but merely reduce the extent of the symptoms and the frequency of breakouts. Other small molecules in development also aiming at DNA synthesis are targeting another virus enzyme (Helicase-primase complex). The therapeutic strategy described in the subject technology provides a completely different mechanism, *i.e.* inhibition of the virus entry. Thus it may provide advantages compared to the existing drugs with respect to toxicity and efficacy.

With respect to cancer therapy, the subject invention may offer a new class of drugs which act by an alternate mechanism in comparison to conventional cancer drugs. The technology may thus prove to be advantageous with respect to toxicity and efficacy. In addition, drugs developed by this technology may be given to patients in combination with existing drugs.

Development Status:

• The inhibition of HSV infection by DTNB and antibodies against the PDI surface protein have been demonstrated *in vitro.*

• Pre-clinical or clinical data is not yet available.

• Further development to identify PDI inhibitors applicable for viral therapy and cancer therapy is currently ongoing.

• Further development and optimization of recombinant HSV to be utilized as an oncolytic virus is ongoing. Only *in vitro* data is available at present.

Market: The market for anti-herpes drugs is huge. Results of a nationally representative study show that genital herpes is common in the United States. Nationwide, at least 50 million people ages 12 and older, or one of five adolescents and adults, have had a latent or acute genital HSV infection. There are up to 1 million new cases every year and according to some estimates genital herpes is now more common than diseases like diabetes and asthma. At the same time there is still no effective drug against this virus available, thus the commercial potential in developing a new effective drug is enormous.

With respect to the market for cancer therapeutics the opportunities are also vast. This market has been growing in the last several years by an estimate of 18% a year due to the introduction of many new and innovative drugs, and some reports forecast a market size of close to $90 billion by 2011.

Inventors: Nancy S. Markovitz and Stephen Daniell (FDA).

Publications:

1. NS Markovitz. The herpes simplex virus type 1 UL3 transcript starts within the UL3 open reading frame and encodes a 224-amino-acid protein. J Virol. 2007 Oct;81(19):10524–10531.

2. E Bar, T Kimura, M Kikuchi, NS Markovitz. Protein disulfide isomerase (PDI) family members interact with the UL3 protein of herpes simplex virus-1. 31st International Herpesvirus Workshop, Abstract #8.51, Seattle WA, July 22–28, 2006.

3. KD Nguyen, EE Bar, MJ Dambach, NS Markovitz. Yeast Two Hybrid Identification of the Herpes Simplex Virus-1 UL3 protein domains that interact with cellular target proteins. NIH Research Festival, Abstract #CB–19, Bethesda MD, October 2006.

4. MJ Dambach, J Trecki, N Martin, NS Markovitz. Oncolytic viruses derived from the γ34.5-deleted herpes simplex virus recombinant R3616 encode a truncated UL3 protein. Mol Ther. 2006 May;13(5):891–898.

Patent Status: U.S. Provisional Application No. 61/134,566 filed 11 Jul 2008 (HHS Reference No. E–236–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*; John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Identification of Adaptive Mutations That Increase Infectivity of Hepatitis C Virus JFH1 Strain in Cell Culture

Description of Technology: The technology offered for licensing is in the field of hepatitis C. More specifically the invention discloses an efficient way to grow the virus, a way that may facilitate advanced research in the field of hepatitis C (HCV) and its pathogenesis, as well as provide for convenient and effective ways to screen for new hepatitis C drugs. It also lends itself to the development of vaccines against hepatitis C.

The invention is based on the finding that certain mutations in the JFH1 strain of HCV, as well as certain chimera of the mutated strain, can lead to an increase in production of infectious virus particles in cell cultures (*i.e.*, Huh-7.5) between 100- to 1000-fold as compared to the wild type virus. Such mutations are introduced to a viral RNA that codes for hepatitis C and the latter is introduced to an appropriate cell to produce a high yield of highly infective virus.

Progress in research in the field of HCV, as well as the development of drugs and vaccines to combat hepatitis C infections, has been hampered for years due to the lack of robust in vivo cell culture systems for the study of this virus. Several breakthroughs in the area that occurred in 2005 and thereafter (*i.e.*, the isolation of HCV genotype 2a sequence (JFH1) and the generation of the unique cell line Huh-7.5) contributed significantly to progress in the field, but further optimization and improvements in the culture system have still been needed. The subject invention offers such improvements and thus may lead to enhanced progress in HCV research and in the development of the much needed drugs and vaccines against the virus.

Applications:

• Research in the field of HCV and its pathogenesis.

• Screening and discovery of drugs that inhibit HCV infections.

• Development of vaccines for HCV.

Advantages: 100- to 1000-fold more efficient method to grow virus particles.

Development Status: The invention is fully developed and requires no additional work.

Market: It is estimated that 170 million people worldwide suffer from HCV infection, with 3 to 4 million new cases each year. The primary causes of new HCV infections worldwide are unscreened blood transfusions and the reuse of syringes, without sterilization (WHO). It is estimated that nearly 4.1 million people in the U.S. are infected with HCV with 3.2 million of the 4.1 million people chronically infected. Approximately 70% of those chronically infected suffer from chronic liver disease (CDC). There has been a major decline in the number of new HCV infections per year in the U.S. from the 1980s (240,000) to 2004 (26,000) (CDC). In the U.S., the primary cause of new infections is needle-sharing by intravenous drug users. Despite the significant decrease in new HCV infections, the number of patients requiring treatment for chronic HCV is

expected to rise as patients with HCV infection age and progress to more serious liver diseases (McHutchison HG, *et al.* Chronic Hepatitis C: An Age Wave of Disease Burden 2005. American Journal of Managed Care. 11: S286–S295). From 2010–2019, it is estimated that direct medical expenditures for HCV will be $10.7 billion; the costs of decompensated HCV infection (cirrhosis and hepatocellular carcinoma) are estimated to be $21.3 billion; and indirect costs associated with the loss of life under age 65 are estimated to be $54.2 billion (McHutchison HG, *et al.* 2005).

Chronic hepatitis C is a serious disease that can result in long-term health problems, including liver damage, liver failure, liver cancer, or even death. It is the leading cause of cirrhosis and liver cancer and the most common reason for liver transplantation in the United States. Approximately 8,000–10,000 people die every year from hepatitis C related liver disease.

Of every 100 people infected with the hepatitis C virus, about 75–85 people will develop chronic hepatitis C virus infection; of those,

- 60–70 people will go on to develop chronic liver disease.
- 5–20 people will go on to develop cirrhosis over a period of 20–30 years.
- 1–5 people will die from cirrhosis or liver cancer.

In spite of the urgent public health need for effective drugs and vaccines against HCV as discussed above, and in spite of the huge market potential for such medical remedies, there are no effective drugs or vaccines in existence as of yet due to technical difficulties, one of them, as mentioned at the outset, is the difficulties in growing and culturing the virus. The only drugs available to treat HCV at the present time are Ribavirin and Interferon but none constitute a real cure for the disease. They also can present severe side effects that make the use of them prohibitive in many cases. The subject technology may therefore present an opportunity for drug and vaccine companies to accelerate their research and development in this area.

Inventors: Rodney Russell, Jens Bukh, Robert H. Purcell, and Suzanne U. Emerson (NIAID).

Publication: RS Russell, JC Meunier, S Takikawa, K Faulk, RE Engle, J Bukh, RH Purcell, SU Emerson. Advantages of a single-cycle production assay to study cell culture-adaptive mutations of hepatitis C virus. Proc Natl Acad Sci USA. 2008 Mar 18;105(11):4370–4375.

Patent Status:

- U.S. Provisional Application No. 60/931,259 filed 21 May 2007 (HHS Reference No. E–171–2007/0–US–01).
- U.S. Provisional Application No. 61/066,773 filed 22 Feb 2008 (HHS Reference No. E–171–2007/1–US–01).
- PCT Application No. PCT/US2008/063982 filed 16 May 2008, which published as WO 2008/147735 on 04 Dec 2008 (HHS Reference No. E–171–2007/2–PCT–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*; Rung C. Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov*.

Dated: March 24, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–7207 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of any U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Monoclonal Antibodies to Human Tristetraprolin (TTP)

Description of Technology: TTP has been implicated in autoimmune and inflammatory diseases through its role as a regulator of the transcripts encoding several pro-inflammatory cytokines, including tumor necrosis factor alpha. However, it has been difficult to study endogenous TTP in man and other animals because it is expressed at very low levels in most cells and tissues, and because of the lack of mouse monoclonal antibodies directed at the human protein.

Scientists at the NIH have developed three mouse monoclonal antibodies (TTP–16, TTP–214 and TTP–409) that react to different regions of the human TTP to allow for the identification and localization of the TTP protein by standard protocols. Although validation has only been conducted at the level of western blotting to date, they do not appear to cross-react with other human members of the TTP protein family.

Potential Applications: Mouse monoclonal antibodies to human TTP will be useful in both clinical and basic research on a variety of inflammatory diseases and studies of mRNA destabilization. They can be used to identify or isolate TTP in cells or tissues by Western blotting, immunoprecipitation, immunohistochemistry, immunofluorescence, flow cytometry, and RNA super-shift assays, and can also be used in cross-linking and immunoprecipitation protocols.

Inventors: Elizabeth A. Kennington and Perry J. Blackshear (NIEHS).

Patent Status: HHS Reference No. E–123–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@hhs.nih.gov.*

Use of Anthrax Lethal Factor To Treat Cancer and Screening Methods for MAPK Kinase Protease Activity

Description of Technology: Anthrax toxin, produced by *Bacillus anthracis*, is composed of three proteins; protective antigen (PA), edema factor (EF), and lethal factor (LF). PA by itself has little or no toxic effect upon cells, but serves to bind cell surface receptors and mediate the entry of EF and LF into the cell. EF has been identified as an adenylate cyclase and together with PA forms a toxin (edema toxin; EdTx) which can induce edema formation when injected subcutaneously. LF and PA together form a toxin (lethal toxin; LeTx) which can cause rapid lysis of certain macrophage-derived cell lines *in vitro* as well as death when injected intravenously.

Indirect evidence had suggested that LF was a metalloprotease. However, the

intracellular target of LF remained unknown until recently when NIH scientists discovered that LF proteolytically inactivates mitogen activated protein kinase kinase 1 and 2 (MAPKK1, 2). Using oocytes of the frog *Xenopus laevis* as well as tumor derived NIH3T3 (490) cells expressing an effector domain mutant form of the human V12HaRas oncogene these scientists demonstrated that LF induced proteolysis of MAPKK 1 and 2, resulting in their irreversible inactivation. MAPKK 1 and 2 are components of the mitogen activated protein kinase (MAPK) signal transduction pathway, an evolutionarily conserved pathway that controls cell proliferation and differentiation in response to extracellular signals and also plays a crucial role in regulating oocyte meiotic maturation. Further, the MAPK pathway has been shown to be constitutively activated in many primary human as well as in tumor-derived cell lines. Consistent with this, treatment of V12Ha-Ras transformed NIH 3T3 cells with LeTx inhibits cell proliferation and causes their reversion to a non-transformed phenotype.

This invention specifically relates to *in vitro* and *ex vivo* methods of screening for modulators, homologues, and mimetics of LF mitogen activated protein kinase kinase (MAPKK) protease activity. Applications for this technology could be:

- A novel tool (LF) for the study of the cellular role of the MAPK pathway in normal or tumor cells.
- Investigation of LF for developing inhibitors for cancer therapy. By analyzing structural-functional relationships, additional compounds with improved specificity, increased potency, and reduced toxicity can be generated. Mimetics which block MAPKK activity or the determination of mechanisms of regulation of proteases that target MAPKK at or near the same site targeted by LF could be developed.
- A protease-based assay for LF by using a peptide to test for LF cleavage. There is no commercial test for anthrax. This assay could be used for testing soldiers for anthrax exposure. Characterization of the interaction between LF and MAPKK at the amino acid level may lead to the generation of inhibitors which may prove useful in treating anthrax.

Inventors: Nicholas S. Duesbery (NCI), Craig Webb (NCI), Stephen H. Leppla (NIDCR), George F. Vande Woude (NCI).

Patent Status:

U.S. Patent 6,485,925 issued 26 Nov. 2002 (HHS Reference No. E–066–1998/0–US–06).

U.S. Patent 6,893,835 issued 17 May 2005 (HHS Reference No. E–066–1998/0–US–07).

U.S. Patent 6,911,203 issued 28 June 2005 (HHS Reference No. E–066–1998/0–US–08).

U.S. Patent 7,056,693 issued 06 June 2006 (HHS Reference No. E–066–1998/0–US–10).

U.S. Patent 7,183,071 issued 27 Feb. 2007 (HHS Reference No. E–066–1998/0–US–11).

International rights available.

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov.*

This abstract updates the version published in the **Federal Register** on Friday, March 13, 2009 (74 FR 10947–10948), to correct the reference numbers from E–068–1998 to E–066–1998.

Dated: March 25, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–7223 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Vaccine for Shigella sonnei

Description of Technology: Shigellosis, an inflammatory enteric infection is on the World Health Organization's priority list of disease to be prevented. It can be prevented by O-specific polysaccharide (O-SP)-protein conjugate vaccines in adults. But the highest incidence and severity of *S. sonnei* shigellosis is in young children and the O-SP-protein conjugate that was effective in adults cannot overcome the age-related immunogenicity of vaccines in this age group. Thus, a better immunogen is needed.

The immunogen claimed in this application uses O-SP formed by isolation of low molecular mass of O-SP-core fragments from the native product that allows a conjugate to be formed with a ''sun'' configuration as opposed to ''lattice'' type conjugates made previously, based on a synthetic saccharide conjugate of *S. dysenteriae* type 1 that induced significantly higher antibody levels than the ''lattice'' type conjugate. IgG antibody levels induced in young outbred mice with the ''sun'' configuration *S. sonnei* conjugate were higher than conjugates made with the full length O-SP.

This application claims the vaccine compositions described above, methods of making the vaccine compositions of the technology, and methods of preventing and/or treating Shigellosis.

Application: Development of *Shigella sonnei* vaccines and diagnostics.

Advantages: Known regulatory path for conjugate vaccines, potential reduction in number of doses of vaccine, pediatric vaccine.

Development Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: John B. Robbins (NICHD), Rachel Schneerson (NICHD), Joanna Kubler-Kielb (NICHD), Christopher P. Mocca (NICHD), *et al.*

Publications:

1. J Kubler-Kielb et al. The elucidation of the structure of the core part of the LPS from *Plesiomonas shigelloides* serotype O17 expressing O-polysaccharide chain identical to the *Shigella sonnei* O-chain. Carbohydr Res. 2008 Dec 8;343(18):3123–3127.

2. JB Robbins *et al.* Shigella sonnei O-specific oligosaccharide-core-protein conjugates: synthesis, characterization and immunogenicity in mice. Proc Natl Acad Sci. 2009; doi 10.1073/pnas.0900891106.

Patent Status: U.S. Provisional Application No. 61/089,394 filed 15 Aug 2008 (HHS Reference No. E–308–2008/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*

Radiotracers for Imaging P-glycoprotein Transporter Function

Description of Technology: This invention offers technology to help treat certain brain diseases, such as Alzheimer's disease and Parkinson's, and may lead to more effective and personalized treatments. P-glycoprotein transporter (P-gp) acts as a pump at the blood-brain barrier to exclude a wide range of xenobiotics (*e.g.*, toxins, drugs, etc.) from the brain and is also expressed in a tumor in response to exposure to established/prospective chemotherapeutics (a phenomenon known as multidrug resistance; MDR). The instant invention relates to compounds that are avid substrates for P-gp, and their preparation and use as radiotracers for imaging P-gp function *in vitro* and *in vivo*.

Applications: These radiotracers have potential application for investigating the function of P-gp at the blood-brain barrier for human subjects and patients in relation to neuropsychiatric disorders and in cancer. Their application may lead to a better general understanding of the role of P-gp in the unfolding of certain brain diseases (*e.g.,* Alzheimer's disease, Parkinson's disease), and ultimately to more effective and personalized treatment. Likewise, these radiotracers may be applied in oncology to help understand MDR and its clinical manifestation, and to help seek out cancer therapies that avoid MDR.

Advantages: This class of radiotracer, typified by the described [^{11}C]dLop, is designed to restrict the formation of radiometabolites that would obstruct the measurement of P-gp function at the blood-brain barrier or at tumors. In this sense these radiotracers are vastly superior to progenitors (*e.g.,* [^{11}C]verapamil, [^{11}C]loperamide), which can only give qualitative not quantitative information.

Development Status: Radiotracer studies in human subjects are in progress. Longer-lived versions of the radiotracers are in development.

Market: These radiotracers may be of interest to those wishing to market and/or apply such radiotracers in the medical imaging field.

Inventors: Victor W. Pike, Robert B. Innis, Sami S. Zoghbi, and Neva Lazarova (NIMH).

Publications:

1. SS Zoghbi, JS Liow, F Yasuno, J Hong, E Tuan, N Lazarova, RL Gladding, VW Pike, RB Innis. ^{11}C–Loperamide and its N-desmethyl radiometabolite are avid substrates for brain P-glycoprotein efflux. J Nucl Med. 2008 Apr;49(4):649–656.

2. N Lazarova, SS Zoghbi, J Hong, N Seneca, E Tuan; RL Gladding, JS Liow, A Taku, RB Innis, VW Pike. Synthesis and evaluation of [N-methyl-^{11}C]N-desmethyl-loperamide as a new and improved PET radiotracer for imaging P-gp function. J Med Chem. 2008 Oct 9;51(19):6034–6043.

3. JS Liow, W Kreisl, SS Zoghbi, N Lazarova, N Seneca, RL Gladding, A Taku, P Herscovitch, VW Pike, RB Innis. P-glycoprotein function at the blood-brain barrier imaged using ^{11}C–N-desmethyl-loperamide in monkeys. J Nucl Med. 2009 Jan;50(1):108–115.

Patent Status: U.S. Patent Application No. 12/112,994 filed 30 Apr 2008 (HHS Reference No. E–318–2007/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: RC Tang, JD, LLM; 301–435–5031; *tangrc@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Mental Health Molecular Imaging Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize radiotracers for imaging P-gp function. Please contact Victor Pike at *pikev@mail.nih.gov* for more information.

Dated: March 24, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–7213 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–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; Molecular Neuroscience.

Date: April 20–21, 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: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *lewisdeb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Developmental, Cellular and Molecular Biology.

Date: April 20, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict Review for UKDG Study Section.

Date: April 27, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conferece Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Memory and Neuroendocrinology.

Date: April 29, 2009.

Time: 3 p.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: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 50950, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@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: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6785 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Birth Defects Genome-Wide Association Study.

Date: April 29, 2009.

Time: 2 p.m. to 3:30 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 24, 2009

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7226 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Child Health and Human Development Special Emphasis Panel; ''The Screenable Disorders PAR''.

Date: April 30, 2009.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7227 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Dental and Craniofacial Research Council, May 18, 2009, 8:30 a.m. to May 18, 2009, 4:30 p.m., National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD, 20892 which was published in the **Federal Register** on January 12, 2009, 74 FR 1222.

The meeting of the advisory council has been changed from May 18, 2009, to May 22, 2009. The meeting is partially closed to the public.

Dated: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6783 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

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

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, ''Develop Automated Methods to Identify Environmental Exposure Patterns in Satellite Imagery Data.''

Date: April 15, 2009.

Time: 12:45 p.m. to 1:45 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review And Logistics Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8061, Bethesda, MD 20892–8329. 301–496–7174, *venerk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Oncology.

Date: June 3–5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton—DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael B. Small, PhD, Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892–8328. 301–402–0996. *smallm@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Clinical Studies.

Date: June 15–17, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Majed M. Hamawy, PhD, MBA, Scientific Review Officer, Research Programs Review Branch, Division of Extramual Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852. 301–594–5659. *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention, Control and Population Sciences.

Date: June 16–17, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton—Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892. 301–594–1402. *lopacw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE Review.

Date: June 16–18, 2009.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Application Use of Transformative Emerging Technologies in Cancer Research.

Date: June 22–23, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Viatcheslav A. Soldatenkov, MD, PhD, Scientific Review Officer, Special Review And Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7206 Filed 3–30–09; 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 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 meeting will he 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; Loan Repayment.

Date: March 30, 2009.

Time: 9 a.m. to 5p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.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 on Drug Abuse Special Emphasis Panel; Mouse Gene Development Initiative.

Date: May 6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852, 301–435–1432, *liangm@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Brain Imaging Studies of Negative Reinforcement in Humans.

Date: May 29, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@mail.nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Health Services Research Subcommittee.

Date: June 9–10, 2009,

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Lowes Hotel, 1177 Fifteenth Street, NW., Washington, DC 20005.

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6781 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Medication Discovery Using Rat Models of Relapse.

Date: April 14, 2009.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Use of I/M Cross-Section and m/z as a Unique Identifier of Lipids and Neuropeptides in Complex Biosamples.

Date: April 15, 2009.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; National Hispanic Science Network.

Date: April 16, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852, 301–435–1432, *liangm@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Educational Marketing.

Date: April 28, 2009.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Long Acting Bup for Opiate Maintenance.

Date: April 29, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Scott Chen, PhD, 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, 301–443–9511, *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Novel Azetidine CB1 Antagonists.

Date: May 6, 2009.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6787 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Rheumatic Disease Clinical Research Grant Review.

Date: March 31, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kan Ma, PhD, Scientific Review Officer, NIH/NIAMS, EP Review Branch, One Democracy Plaza Suite 800, Bethesda, MD 20892–4872, 301–594–4952, *mak2@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Research Project (R01) and Clinical Trial Planning (R34) Grant Review.

Date: April 15, 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 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal, and Skin Diseases, 6701 Democracy Blvd, Suite 824, Bethesda, MD 20892, (301) 594–4955, *browneri@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Loan Repayment Program Review.

Date: April 30, 2009.

Time: 10 a.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: Kan Ma, PhD, Scientific Review Officer, MH/NIAMS EP Review Branch, One Democracy Plaza Suite 800, Bethesda, MD 20892–4872, 301–594–4952, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6929 Filed 3–30–09; 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 Meetings

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

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

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Regulation of Cytokine Transcription and Inflammation.

Date: March 30, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay Bruce Sundstrom, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3119, 6700B Rockledge Drvie, MSC–7616, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@niaid.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 Allergy and Infectious Diseases Special Emphasis Panel; B Cell Epitope Discovery and Mechanisms of Antibody Protection.

Date: April 20–21, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid HIV Point-of-Care Diagnostic Device for Resource-Limited Setting.

Date: April 20–21, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Room 3130, Bethesda, MD 20892–7616, 301–496–7966, *rbinder@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trials.

Date: April 24, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@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: March 25, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7197 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH, including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board.

Date: April 27–28, 2009.

Open: April 27, 2009, 8:30 a.m. to 5:30 p.m.

Agenda: Presentation and discussion will include an overview of NIH mission, structure, budget, perspectives on how science has shaped the NIH organization, and future directions. There will also be time allotted on the agenda for public comment. Sign up for public comment will begin at approximately 8 a.m. on both April 27 and 28. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the address below.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: April 28, 2009, 8:30 a.m. to 3:30 p.m.

Agenda: Continuation of April 27th meeting.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Dr. Lyric Jorgenson, PhD, NIH–AAAS Science and Technology Policy Fellow, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, Building 1 Room 218 MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892. *smrb@mail.nih.gov.* (301) 496–6837.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The meeting will also be Web cast. The draft meeting agenda and other information about the SMRB, including information about access to the Web cast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: March 25, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7200 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Orally Active Synthetic Estrogens for Fertility Control, Hormone Replacement Therapy, and Endometriosis

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(1), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the invention embodied in United States Patent No. 5,554,603, issued September 10, 1996, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–US–01); PCT Application No. PCT/US94/10393, filed September 15, 1994, now expired, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–PCT–02); Australian Patent No. 700576, issued April 22, 1999, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–AU–03); Canadian Patent No. 2171740, issued July 26, 2005, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–CA–04); European Patent No. 719276, issued November 26, 1997, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–EP–05) and validated in Austria, Switzerland, Germany, Denmark, Spain, France, Greece, Ireland, Italy, Luxembourg, Monaco, the Netherlands, Portugal, Sweden, Belgium, and Great Britain; and Japanese Patent No. 3993228, issued August 3, 2007, entitled ''Orally Active Derivatives of 1, 3, 5(10)–Estratriene'' (HHS Ref. No. E–137–1993/0–JP–06) to Evestra, Inc., having a place of business in San Antonio, Texas. The patent rights in this invention have been assigned to the United States of America.

The contemplated exclusive license territory may be worldwide, and the field of use may be limited to the use of CDB–3701 (11β, 17β–dinitratoestradiol 3-acetate) for all indications where estrogen is prescribed as a treatment, including fertility control, hormone replacement therapy (''HRT''), and endometriosis.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 1, 2009 will be considered.

ADDRESSES: Requests for copies of the patents, inquiries, comments, and other materials relating to the contemplated license should be directed to: Tara L. Kirby, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4426; Facsimile: 301–402–0220; E-mail: *tarak@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The utility of estrogenic substances in the practice of medicine is well documented. Estrogens may be used for the replacement of the natural hormone estradiol in hypogonadism, and following the removal of the ovaries or cessation of ovarian activity during menopause. They are also widely employed as a component of oral contraceptives. However, available orally-active synthetic estrogens are associated with a number of potential side effects, including cancer, blood clots, heart attack, elevated blood pressure, and reduced glucose tolerance.

This technology relates to a family of novel, active estrogens that are nitrate esters of estradiol. These nitrate esters possess enhanced estrogenic activity following oral administration and lack a 17-ethynyl alcohol, which has been implicated in many side effects attributed to other synthetic estrogens. It is anticipated that these esters could be used in all instances where estrogen is prescribed as a treatment.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the prospective field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 24, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–7210 Filed 3–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5307–N–01]

Notice of Web Site Availability: Allocations, Application Procedures and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees Under the American Recovery and Reinvestment Act of 2009

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

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its Web site of the allocation formula, allocation amounts, list of grantees, statutory and regulatory program requirements, submission deadlines, and other requirements for the Homelessness Prevention and Rapid Re-Housing Program (HPRP) authorized by Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009). HPRP funding is focused on providing short- and medium-term rental assistance to individuals and families who are currently in housing, but at risk of becoming homeless, and individuals and families who are homeless. Approximately $1.489 billion will be allocated for these purposes to states, metropolitan cities, urban counties and territories. State sub-grantees and non-profit sub-grantees are also eligible to receive HPRP funds from grantees. The notice establishing the program and application requirements for these funds, allocation information, and eligibility criteria is available on the HUD Web site at: *http://www.hud.gov/recovery/homeless-prevention.cfm*.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Special Needs Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington DC 20410–3000; telephone 1–800–998–9999. Hearing- or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free

Federal Information Relay Service during working hours at 800–877–8339.

Dated: March 25, 2009.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E9–7182 Filed 3–30–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0041]

MMS Information Collection Activity: 1010–0048 Geological and Geophysical (G&G) Explorations of the OCS, Extension of a Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

DATES: Submit written comments by June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and form that require the subject collection of information.

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

- *Electronically:* Go to *http://www.regulations.gov*. Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2008–OMM–0041 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior, Minerals Management Service, Attention: Cheryl Blundon, 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0048 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

Form(s): MMS–327.

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

The OCS Lands Act (43 U.S.C. 1352) further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the OCS Lands Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director of MMS and is not used in the normal conduct of the business of the permittee.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and the Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. The G&G permits are subject to cost recovery, and MMS regulations specify the filing fee for the application.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. The MMS uses information collected to understand the G&G characteristics of oil- and gas-bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), and under regulations at 30 CFR parts 250, 251, and 252.

No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annual; and as specified in permits.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur permittees or notice filers.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 1,586 hours. The following chart details the individual components and respective burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 251	Reporting and recordkeeping requirement	Hour burden non-hour cost burden
251.4(a), (b); 251.5(a), (b), (d); 251.6; 251.7.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests/revisions when necessary.	6 $2,012 application fee.
251.4(b); 251.5(c), (d); 251.6	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6
251.6(b) 251.7(b)(5)	Notify MMS if specific actions should occur; report archaeological resources (no instances reported since 1982).	1
251.7	Submit information on test drilling activities under a permit, including Forms MMS–123 and MMS–123S (burden included under 30 CFR part 250, subpart D, 1010–0141).	0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1
251.7(d)	Submit bond(s) on deep stratigraphic test (burden included under 30 CFR part 256, 1010–0006).	0
251.8(a)	Request reimbursement for certain costs associated with MMS inspections (no requests in many years. OCS Lands Act requires Government reimbursement).	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit	2
251.9(c)	Notify MMS to relinquish a permit	½
251.10(c)	File appeals (exempt under 5 CFR 1320.4(a)(2), (c))	0
251.11; 251.12	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
251.13	Request reimbursement for certain costs associated with reproducing data/information	2
251.14(a)	Submit comments on MMS intent to disclose data/information to the public	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/information to an independent contractor/agent.	1
251.14(c)(4)	Contractor/agent submits written commitment not to sell, trade, license, or disclose data/information without MMS consent.	1
251.1–251.14	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2
Form MMS–327	Request extension of permit time period	1
Form MMS–327	Retain G&G data/information for 10 years and make available to MMS upon request	1

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden for this collection. In § 251.5, MMS charges a $2,012 G&G application fee. We have identified no other non-hour cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: March 24, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–7170 Filed 3–30–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice of Availability of the Proposed Notice of Sale (NOS) for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 210 in the Western Planning Area (WPA) in the Gulf of Mexico (GOM).

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed NOS for proposed sale 210.

SUMMARY: The MMS announces the availability of the proposed NOS for proposed Sale 210 in the WPA. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 210 are due from the affected States, within 60 days following their receipt of the proposed Notice. The final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 19, 2009.

SUPPLEMENTARY INFORMATION: The proposed NOS for Sale 210 and a ''Proposed Notice of Sale Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: March 10, 2009.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E9–7044 Filed 3–30–09; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–673]

In the Matter of Certain Electronic Devices Including Handheld Wireless Communications Devices; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 23, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Saxon Innovations, LLC of Tyler, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including handheld wireless communications devices, that infringe certain claims of U.S. Patent Nos. 5,235,635; 5,530,597; and 5,608,873. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2734.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 24, 2009 *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain electronic devices, including handheld wireless communications devices that infringe one or more of claims 1, 2, 6, 11–13, and 15 of U.S. Patent No. 5,235,635; claims 1–6 and 8–11 of U.S. Patent No. 5,530,597; and claims 1, 2, 8, 9, 13–15, 20, and 22 of U.S. Patent No. 5,608,873, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Saxon Innovations, LLC, 100 E. Ferguson, Suite 816, First Place, Tyler, TX 75702.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 250, 2-ga, Taepyong-ro, Jung-gu, Seoul 100–742, Korea.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

Samsung Telecommunications America, LLP, 1301 Lookout Drive, Richardson, TX 75082.

(c) The Commission's investigative attorney, party to this investigation, is Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR. 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such

responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: March 25, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–7074 Filed 3–30–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Information Collection Request for the ETA 191, Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers Report: Extension Without Change, Comment Request

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 1, 2009.

ADDRESSES: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; by phone at (202) 693–2991 (this is not a toll-free number); by fax at (202) 693–2874; or by e-mail: *stengle.thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* Public Law 97–362, Miscellaneous Revenue Act of 1982, amended the Unemployment Compensation for Ex-Servicemembers (UCX) law (5 U.S.C. 8509), and Public Law 96–499, Omnibus Budget Reconciliation Act, amended the Unemployment Compensation for Federal Employees (UCFE) law (5 U.S.C. 8501, *et. seq.*) requiring each Federal employing agency to pay the costs of regular and extended UCFE/UCX benefits paid to its employees by the State Workforce Agencies (SWAs). The ETA 191 report submitted quarterly by each SWA shows the amount of benefits that should be charged to each Federal employing agency. The Office of Workforce Security uses this information to aggregate the SWA quarterly charges and submit one official bill to each Federal agency being charged. Federal agencies then reimburse the Federal Employees Compensation (FEC) Account maintained by the U.S. Treasury.

II. *Desired Focus of Comments:* Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 191, Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers Report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to assess performance of the nonmonetary determination function, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:*

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Statement of Expenditures and Financial Adjustments of Federal Funds for Unemployment Compensation for Federal Employees and Ex-Servicemembers.

OMB Number: 1205–0162.

Agency Number: ETA 191.

Affected Public: State Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 53 states × 4 quarters = 212 responses.

Average Time per Response: 6 hours.

Estimated Total Burden Hours: 1,272 hours.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $0.

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

Dated: March 25, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9–7119 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Extension Without Change of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Data Collection; Comment Request

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 1, 2009.

ADDRESSES: Send comments to Andrew W. Spisak, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room S–4522, Washington, DC 20210; telephone number: 202–693–3196 (this is not a toll-free number); fax: 202–693–3975; or by e-mail: *spisak.andrew@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* Since 1987, all State Workforce Agencies (SWAs) except the U.S. Virgin Islands have been required by regulation at 20 CFR part 602 to operate BAM programs to assess the accuracy of their UI benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX). Beginning in 2001, BAM was modified to include the sampling and investigation of UI claims denied for monetary, separation, or nonseparation issues.

BAM is one of the tools the Department uses to measure and reduce waste, fraud, and abuse in the UI program. By investigating small representative weekly samples of both paid and denied UI claims, each State is able to estimate reliably the number and dollar value of proper and improper payments; the number of proper and improper denials of claims for UI benefits; the rates of occurrence of these proper and improper payments and denials; and the error types, error causes, and the parties that are responsible for the errors.

Paid Claims Accuracy. Each week SWAs select random samples of both intrastate and interstate original payments (including combined wage claims) made for a week of UI benefits under the State UI, UCX or UCFE programs. A sample of 360 cases per year is pulled in the ten States with the smallest UI program workloads (defined as the average annual UI weeks paid during the last five years) and 480 cases per year in the other States. State BAM staff audit each selected claim, examining all aspects of a claimant's eligibility to receive UI benefits during the sampled week. The findings are entered into an automated database that is maintained on a computer located in each State.

Denied Claims Accuracy. Each week States select random samples from three separate sampling frames constructed from the universes of UI claims for which eligibility was denied for monetary, separation and nonseparation reasons. All States sample a minimum of 150 cases of each denial type in each calendar year. State BAM staff review agency records and contact claimants, employers, and all other relevant parties to verify information in agency records or obtain additional information pertinent to the determination that denied eligibility for UI benefits. Unlike the investigation of paid claims, in which all prior determinations affecting claimant eligibility for the compensated week selected for the sample are evaluated, the investigation of denied claims is limited to the issue upon which the denial determination is based. The findings are entered into an automated database that is maintained on a computer located in each State.

The Department maintains a database of each State's BAM paid and denied claims cases, minus any personally identifying information. The Department uses BAM data to measure State performance with respect to UI payment integrity and to meet the Department's reporting requirements of the Government Performance and Results Act (GPRA) and the Improper Payments Information Act (IPIA). The Department also relies heavily on BAM data for information on UI operations, such as the percentage of claims filed via the Internet and telephone, UI wage replacement rates, and claimant characteristics. The results of the BAM survey are reported annually on the ETA Web site, *http://workforcesecurity.doleta.gov/unemploy/*.

II. *Desired Focus of Comments:* Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the BAM data collection. The Department's information collection authority for BAM, under Office of Management and Budget (OMB) number 1205–0245, is scheduled to expire on August 31, 2009. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to measure performance of the UI program, especially with respect to the accuracy of payments and denials of claims for benefits, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:*

Type of Review: Extension without change of a currently approved collection.

Agency: Employment and Training Administration (ETA).

Title: Unemployment Insurance Benefit Accuracy Measurement.

OMB Number: 1205–0245.

Agency Number: BAM State Operations Handbook (ET Handbook No. 395, 4th edition).

Affected Public: State Workforce Agencies (Primary), individuals, businesses, and not-for-profit institutions.

Total Respondents: 188,984 (unchanged).

Estimated Total Burden Hours: 429,897 (+ 92 − adjustment).

Total Burden Cost (Capital/Startup): $66,870 (Federal purchase of new Sun T2000 computers with printer and terminal peripherals for State agencies. Cost reflects annual cost over three-year life cycle and 30 percent pro-rata share of usage for BAM activities.)

Total Burden Cost (Operating/Maintaining): $639,649 (Annual Federal cost for contractor and software support, based on 30 percent pro-rata share for BAM activities.)

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

Dated: March 25, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9–7120 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request for ETA Handbook No. 391, Unemployment Compensation for Federal Employees; Comment Request for Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 1, 2009.

ADDRESSES: Quinn Watt, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: (202) 693–3483 (This is not a toll-free number), Fax: (202) 693–3975, e-mail: *Watt.Quinn@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Chapter 5 U.S.C. 8506 states that ''Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' The information shall include the findings of the employing agency concerning—

(1) Whether or not the Federal employee has performed Federal service;

(2) The periods of Federal Service;

(3) The amount of Federal wages; and

(4) The reasons for termination of Federal service.

The law (5 U.S.C. 8501, *et seq.*) requires State Workforce Agencies (SWA's) to administer the UCFE (Unemployment Compensation for Federal Employees) program in accordance with the same terms and provisions of the paying State's unemployment insurance law which apply to unemployed claimants who worked in the private sector. SWA's must be able to obtain certain information (wage, separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The Department of Labor has prescribed forms to enable SWAs to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, ETA–935, ETA–936, ETA–939, and ETA 8–32.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: ETA Handbook No. 391 (Unemployment Compensation for Federal Employees).

OMB Number: 1205–0179.

Agency Number: ETA Handbook No. 391.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: While all UCFE claims require an ETA 931 and ETA 935, the other forms are used as needed.

Total Responses: 131,142 responses.

Average Time per Response: 3 seconds per response.

Estimated Total Burden Hours: 111 hours.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $0.

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

Dated: March 25, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9–7121 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,494, etc.]

Chrysler LLC, Kokomo Transmission Plant, Powertrain Division, Including On-Site Leased Workers From Aerotek, American Food & Vending and Wackenhut Security, Kokomo, IN, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 15, 2008, applicable to workers of Chrysler LLC, Kokomo Transmission Plant, Powertrain Division, Kokomo, Indiana, Chrysler LLC, Indiana Transmission Plants 1 and 2, Powertrain Division, Kokomo, Indiana, and Chrysler LLC, Kokomo Casting Plant, TCMA Division, Kokomo, Indiana. The notice was published in the **Federal Register** on January 14, 2009 (74 FR 2136).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of aluminum transmissions, cases and component parts.

New information shows that workers leased from Aerotek, American Food & Vending, and Wackenhut Security were employed on-site at the Kokomo, Indiana locations of the above mentioned plants of Chrysler LLC.

The Department has determined that these workers were sufficiently under the control of Chrysler LLC, Kokomo Transmission, Indiana Transmission Plants 1 & 2, and Kokomo Casting Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Aerotek, American Food & Vending and Wackenhut Security working on-site at the Kokomo, Indiana locations of the subject firm.

The amended notice applicable to TA–W–64,494 is hereby issued as follows:

''All workers of Chrysler LLC, Kokomo Transmission Plant, Powertrain Division, including on-site leased workers from Aerotek, American Food & Vending and Wackenhut Security, Kokomo, Indiana (TA–W–64,494), Chrysler LLC, Indiana Transmission Plants 1 & 2, Powertrain Division, including on-site leased workers from Aerotek, American Food & Vending and Wackenhut Security, Kokomo, Indiana (TA–W–64,494A), and Chrysler LLC, Kokomo Casting Plant, TCMA Division, including on-site leased workers from Aerotek, American Food & Vending and Wackenhut Security, Kokomo, Indiana (TA–W–64,494B), who became totally or partially separated from employment on or after November 14, 2007 through December 15, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 23rd day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7099 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,996; TA–W–63,996A]

MPC Computers, LLC, Including On-Leased Employees from Adecco Staffing, Nampa, ID

Including Employees in Support of MPC Computers, LLC, Nampa, Idaho Working at Various Locations in the Following States:
CALIFORNIA TA–W–63,996B
GEORGIA TA–W–63,996D
INDIANA TA–W–63,996F
LOUSIANA TA–W–63,996H
MARYLAND TA–W–63,996J
MISSISSIPPI TA–W–63,996L
OHIO TA–W–63,996N
PENNSYLVANIA TA–W–63,996P
VIRGINIA TA–W–63,996R
WISCONSIN TA–W–63,996T
FLORIDA TA–W–63,996C.
ILLINOIS TA–W–63,996E.
KENTUCKY TA–W–63,996G.
MASSACHUSETTS TA–W–63,996I.
MINNESOTA TA–W–63,996K.
NORTH CAROLINA TA–W–63,996M.
OREGON TA–W–63,996O.
TEXAS TA–W–63,996Q.
WASHINGTON TA–W–63,996S.

MPC Computers, LLC, North Sioux City, South Dakota, Including Employees in Support of MPC Computers, LLC, North Sioux City, South Dakota Working at Various Locations in the Following States:
ALABAMA T–W–63,996U
ARIZONA TA–W–63,996W
COLORADO TA–W–63,996Y
FLORIDA TA–W–63,996AA
INDIANA TA–W–63,996CC
MINNESOTA TA–W–63,996EE
MISSISSIPPI TA–W–63,996GG
NEBRASKA TA–W–63,996II
NEW YORK TA–W–63,996KK
PENNSYLVANIA TA–W–63,996MM
TENNESSEE TA–W–63,996OO
VIRGINIA TA–W–63,996QQ
ARKANSAS TA–W–63,996V.
CALIFORNIA TA–W–63,996X.
CONNECTICUT TA–W–63,996Z.
GEORGIA TA–W–63,996BB.
MARYLAND TA–W–63,996DD.
MISSOURI TA–W–63,996FF.
NORTH CAROLINA TA–W–63,996HH.
NEW MEXICO TA–W–63,996JJ.
OHIO TA–W–63,996LL.
SOUTH CAROLINA TA–W–63,996NN.
TEXAS TA–W–63,996PP.
WASHINGTON TA–W–63,996RR.

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 16, 2008, applicable to workers of MPC Computers, LLC, including leased workers of Adecco Staffing, Nampa, Idaho and MPC Computers, LLC, North Sioux City, South Dakota. The notice was published in the **Federal Register** on October 3, 2008 (73 FR 57682).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers at the Nampa, Idaho location produce computers. The Sioux City, South Dakota workers provide support for that production.

New information shows that worker separations have occurred involving employees in support of and under the control of the Nampa, Idaho and the North Sioux City, South Dakota locations of MPC Computers, LLC working at various locations in the above mentioned states.

Based on these findings, the Department is amending this certification to include employees of the Nampa, Idaho and North Sioux City, South Dakota facilities of MPC Computers, LLC working out of above mentioned states.

The intent of the Department's certification is to include all workers of MPC Computers, LLC Nampa, Idaho and MPC Computers, LLC, North Sioux City, South Dakota who were adversely affected by a shift in production of computers to Mexico.

The amended notice applicable to TA–W–63,996 is hereby issued as follows:

''All workers of MPC Computers, LLC, including on-site leased workers from Adecco, Nampa, Idaho (TA–W–63,996) including employees in support of MPC Computers, LLC, Nampa, Idaho working at various locations in the following states: California (TA–W–63,996B), Florida (TA–W–63,996C), Georgia (TA–W–63,996D), Illinois (TA–W–63,996E), Indiana (TA–W–63,996F), Kentucky (TA–W–63,996G), Louisiana (TA–W–63,996H), Massachusetts (TA–W–63,996I), Maryland (TA–W–63,996J), Minnesota (TA–W–63,996K), Mississippi (TA–W–63,996L, North Carolina (TA–W–63,996M), Ohio (TA–W–63,996N) Oregon (TA–W–63,996O), Pennsylvania (TA–W–63,996P), Texas (TA–W–63,996Q), Virginia (TA–W–63,996R), Washington (TA–W–63,996S) and Wisconsin (TA–W–63,996T) and MPC Computers, LLC, North Sioux City, South Dakota (TA–W–63,996A), including employees in support of MPC Computers, LLC, North Sioux City, South Dakota working at various locations in the following states: Alabama (TA–W–63,996U), Arkansas (TA–

W–63,996V), Arizona (TA–W–63,996W), California (TA–W–63,996X), Colorado (TA–W–63,996Y), Connecticut (TA–W–63,996Z), Florida (TA–W–63,996AA), Georgia (TA–W–63,996BB), Indiana (TA–W–63,996CC), Maryland (TA–W–63,996DD), Minnesota (TA–W–63,996EE, Missouri (TA–W–63,996FF), Mississippi (TA–W–63,996GG) North Carolina (TA–W–63,996HH), Nebraska Mexico (TA–W–63,996II), New Mexico (TA–W–63,996JJ), New York (TA–W–63,996KK), Ohio (TA–W–63,996LL), Pennsylvania (TA–W–63,996MM), South Carolina (TA–W–63,996NN), Tennessee (TA–W–63,996OO), Texas (TA–W–63,996PP), and Virginia (TA–W–63,996QQ) and Washington (TA–W–63,996RR) who became totally or partially separated from employment on or after September 4, 2007, through September 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7098 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 10, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 10, 2009.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—111

[TAA petitions instituted between 2/23/09 and 2/27/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65326	Horton Manufacturing Co., LLC (Wkrs)	Tallmadage, OH	02/23/09	02/17/09
65327	Shamrock Specialty Pack (Wkrs)	El Paso, TX	02/23/09	02/20/09
65328	Jeld-Wen Premium Wood Doors (Comp)	Oshkosh, WI	02/23/09	02/18/09
65329	General Motors/Toledo Powertrain (UAW)	Toledo, OH	02/23/09	02/17/09
65330	KX Technology, LLC (State)	West Haven, CT	02/23/09	02/20/09
65331	Tru Seal Technologies (Wkrs)	Barbouville, KY	02/23/09	02/03/09
65332	Frescale Semiconductor (Wkrs)	Austin, TX	02/23/09	02/19/09
65333	Valley Mills, Inc. (State)	Valley Head, AL	02/23/09	02/20/09
65334	Voss Industries (Wkrs)	Taylor, MI	02/23/09	02/20/09
65335	Engineering Design and Sales, Inc. (Comp)	Danville, VA	02/23/09	02/20/09
65336	Kennametal, Inc. (Wkrs)	Latrobe, PA	02/23/09	02/20/09
65337	Waverly Particleboard Company (Wkrs)	Waverly, VA	02/23/09	02/20/09
65338	Performance Fibers Operations, Inc. (Comp)	Salisbury, NC	02/23/09	02/19/09
65339	Pentagon Technologies Group, Inc. (Comp)	Portland, OR	02/23/09	02/13/09
65340	Johnston Textiles, Inc. (Wkrs)	Valley, AL	02/23/09	02/20/09
65341	Eljer, Inc. (Comp)	Dallas, TX	02/23/09	02/19/09
65342	Glaize Components (Wkrs)	Shelby, NC	02/23/09	02/19/09
65343	Air Products and Chemicals, Inc. (Comp)	Easton, PA	02/23/09	01/28/09
65344	Noranda Aluminum, Inc. (Union)	New Madrid, MO	02/23/09	02/20/09
65345	Quala-Die, Inc. (Comp)	St. Marys, PA	02/23/09	02/19/09
65346	Leggett and Platt, Inc. (Wkrs)	Hanover Township, PA	02/23/09	02/20/09
65347	AV Tool and Engineering, Inc. (Comp)	Clinton TWP, MI	02/23/09	02/17/09
65348	Small Parts Manufacturing (State)	Portland, WA	02/23/09	02/18/09
65349	Columbia Forest Products (State)	Newport, VT	02/24/09	02/09/09
65350	Pennsylvania Industrial Heat Treaters (PIHT), LLC (Comp)	St. Marys, PA	02/24/09	02/24/09
65351	Ford Motor Company (Dearborn Truck Plant) (State)	Dearborn, MI	02/24/09	02/11/09
65352	Orhan North America, Inc. (Comp)	Rochester Hills, MI	02/24/09	02/23/09
65353	Principle Fixture and Millwork, Inc. (Comp)	Osceola, WI	02/24/09	02/23/09
65354	American Pride, LLC (Comp)	Guilford, ME	02/24/09	02/11/09
65355	Luhr Jensen Custom Fishing Lures (Wkrs)	Bingen, WA	02/24/09	02/20/09
65356	Wheatland Tube Company (USW)	Sharon, PA	02/24/09	02/20/09
65357	Kelly Lumber (State)	Ashland, ME	02/24/09	02/23/09
65358	Dauphin Precision Tool (USW)	Millersburg, PA	02/24/09	02/23/09
65359	Modesto Bee (The) (Wkrs)	Modesto, CA	02/24/09	02/07/09
65360	Thor California (State)	Moreno Valley, CA	02/24/09	02/12/09
65361	Schaeffler Group USA, Inc. (Wkrs)	Cheraw, SC	02/24/09	02/05/09

APPENDIX—111—Continued

[TAA petitions instituted between 2/23/09 and 2/27/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65362	Governors America Corp (Wkrs)	Agawam, MA	02/24/09	02/11/09
65363	Nobel Automotive Tennessee, LLC (Comp)	Paris, TN	02/24/09	02/23/09
65364	Sumco Phoenix Corporation (State)	Phoenix, AZ	02/24/09	02/23/09
65365	International Automotive Components, N.A. (IACNA) (Comp)	Dearborn, MI	02/25/09	02/24/09
65366	Hewlett Packard Company (State)	Marlborough, MA	02/25/09	02/17/09
65367	Kern Liebers Textie USA (State)	Charlotte, NC	02/25/09	02/16/09
65368	Airtex Products, LP (Comp)	Fairfield, IL	02/25/09	02/23/09
65369	Ethan Allen Operations, Inc.—Andover (Comp)	Andover, ME	02/25/09	02/23/09
65370	Ethan Allen Operations, Inc.—Old Fort (Comp)	Old Fort, NC	02/25/09	02/23/09
65371	Finisar Corporation (Wkrs)	Horsham, PA	02/25/09	02/19/09
65372	Ethan Allen Operations, Inc.—Orleans (Comp)	Orleans, VT	02/25/09	02/23/09
65373	Qimonda North America (Comp)	Cary, NC	02/25/09	02/23/09
65374	Rohm and Haas Co. (Wkrs)	West Alexandria, OH	02/25/09	02/05/09
65375	WestPoint Home, Inc. (Comp)	Calhoun Falls, SC	02/25/09	02/23/09
65376	Biotage, LLC (Comp)	Charlottesville, VA	02/25/09	02/24/09
65377	Watertronics (State)	Heartland, WI	02/25/09	02/24/09
65378	Ethan Allen Operations, Inc.—Beecher Falls (Comp)	Beecher Falls, VT	02/25/09	02/23/09
65379	Down East Apparel (Comp)	Robersonville, NC	02/25/09	02/24/09
65379A	Anson Shirt Company (Comp)	Wadesboro, NC	02/25/09	02/24/09
65380	L and L Products (Wkrs)	Romeo, MI	02/25/09	01/25/09
65381	Ju China Ting, LLC (Wkrs)	New York, NY	02/25/09	02/24/09
65382	Bahari Group Company (Wkrs)	New York, NY	02/25/09	02/17/09
65383	Plastic Engineering (State)	Sheboygan, WI	02/25/09	02/24/09
65384	Quality Mold (Wkrs)	Erie, PA	02/25/09	02/24/09
65385	General Dynamics Itronix (Comp)	Spokane Valley, WA	02/25/09	02/23/09
65386	ANP Dimensional Lumber (Wkrs)	Ogema, WI	02/25/09	02/24/09
65387	Croscill Acquisition, LLC (Wkrs)	Durham, NC	02/26/09	02/24/09
65388	Findlay Industries (UNITE)	Springfield, OH	02/26/09	02/13/09
65389	International Automotive Components (UNITE)	Fremont, OH	02/26/09	02/13/09
65390	Janesville Acoustics (UNITE)	Norwalk, OH	02/26/09	02/13/09
65391	Wilson Sporting Goods (45810)	Ada, OH	02/26/09	02/13/09
65392	Smead Manufacturing Company (Wkrs)	Logan, OH	02/26/09	02/25/09
65393	Superior Trim (UNITE)	Findlay, OH	02/26/09	02/13/09
65394	Insert Molding Technologies, Inc. (Wkrs)	Warren, PA	02/26/09	02/18/09
65395	SAPPI Fine Paper N.A. (USW)	Westbrook, ME	02/26/09	02/25/09
65396	Berkline/BenchCraft, LLC (Comp)	Morristown, TN	02/26/09	02/25/09
65397	True Textiles (Comp)	Newport, ME	02/26/09	02/25/09
65398	ACCU-Chek Machining, Inc. (Wkrs)	St. Marys, PA	02/26/09	02/25/09
65399	HDM Furniture Industries, Henredon Plant #9 (Comp)	Mt. Airy, NC	02/26/09	02/25/09
65400	Hyosung USA, Inc. (Comp)	Utica, NY	02/26/09	02/25/09
65401	Ingersoll Rand Industrial Technologies (Wkrs)	Southern Pines, NC	02/26/09	02/02/09
65402	Ideal Products, LLC (Comp)	Beacon Falls, CT	02/26/09	02/25/09
65403	Du-Co Ceramics (USW)	Saxonburg, PA	02/26/09	02/06/09
65404	Fleetwood Fixtures (Wkrs)	Leesport, PA	02/26/09	02/25/09
65405	Biofit (UNITE)	Bowling Green, OH	02/26/09	02/13/09
65406	Cummins Filtration (UNITE)	Findlay, OH	02/26/09	02/13/09
65407	Norton Application Software Services, Inc. (Comp)	Spencer, MA	02/26/09	02/25/09
65408	DHL Express (State)	San Francisco, CA	02/26/09	02/25/09
65409	Mohawk Industries (Wkrs)	Calhoun Falls, SC	02/26/09	02/04/09
65410	Century Aluminum of West Virginia, Inc. (USW)	Ravenswood, WV	02/26/09	02/25/09
65411	Marmon Keystone Corporation (USW)	Butler, PA	02/26/09	02/08/09
65412	Bestway Express, Inc. (Wkrs)	Vincennes, IN	02/26/09	02/02/09
65413	Topy America, Inc. (Wkrs)	Frankfort, KY	02/26/09	02/25/09
65414	TG Automotive Sealing Kentucky (TGASK) (Wkrs)	Hopkinsville, KY	02/26/09	02/02/09
65415	Champion Laboratories, Inc. (State)	Albion, IL	02/27/09	02/26/09
65416	Pilgrim Home and Hearth, LLC (Comp)	Benicia, CA	02/27/09	02/26/09
65417	Virage Logic Corporation (Wkrs)	Hampton, NJ	02/27/09	02/26/09
65418	Jim C. Hamer Company (Comp)	Kenora, WV	02/27/09	02/24/09
65419	EDS, HP Company (Comp)	Lansing, MI	02/27/09	02/20/09
65420	Millet Industries (Wkrs)	Huntington Beach, CA	02/27/09	02/25/09
65421	Ashley Furniture (Wkrs)	Ripley, MS	02/27/09	02/26/09
65422	Sun-Times News Group (Comp)	Merrillville, IN	02/27/09	02/26/09
65423	Metaldyne (Wkrs)	Litchfield, MI	02/27/09	01/28/09
65424	Vintage Verandah International (Comp)	Kalispell, MT	02/27/09	02/25/09
65425	Pass and Seymour/Legrand (Comp)	Whitsett, NC	02/27/09	02/26/09
65426	The Bergquist Company (Comp)	Cannon Falls, MN	02/27/09	02/26/09
65427	MoCaro Industries, Inc. (28677)	Statesville, NC	02/27/09	02/26/09
65428	Multi-Plex (Wkrs)	Howe, IN	02/27/09	02/25/09
65429	Cenveo Cadmus Communications (Wkrs)	Ephrata, PA	02/27/09	02/26/09
65430	Niles America Wintech, Inc. (Comp)	Winchester, KY	02/27/09	02/26/09

APPENDIX—111—Continued

[TAA petitions instituted between 2/23/09 and 2/27/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65431	CWR Manufacturing Corporation (Comp)	East Syracuse, NY	02/27/09	02/26/09
65432	Gmark Industries (Comp)	McAlllen, TX	02/27/09	02/26/09
65433	American Racing (State)	Denver, CO	02/27/09	02/26/09
65434	J L French Automative Castings, Inc. (Comp)	Sheboygan, WI	02/27/09	02/24/09
65435	Trim Masters, Inc. (40356)	Nicholasville, KY	02/27/09	02/26/09

[FR Doc. E9–7096 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 10, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 10, 2009.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of March 2009.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 3/2/09 AND 3/6/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65436	Continental Automotive Systems US, Inc. (Comp)	Elkhart, IN	03/02/09	02/26/09
65437B	Navistar, Inc. (UAW)	Indianapolis, IN	03/02/09	02/26/09
65437A	Indianapolis Costing Corp. (UAW)	Indianapolis, IN	03/02/09	02/26/09
65437	Navistar, Inc. (UAW)	Indianapolis, IN	03/02/09	02/26/09
65438	Gulliver's Travels, Inc. (Wkrs)	Sarasota, FL	03/02/09	02/27/09
65439	Mazer Corporation (Wkrs)	Dayton, OH	03/02/09	02/27/09
65440	Fibermark, N.A. (Wkrs)	West Springfield, MA	03/02/09	02/27/09
65441	Triumph Apparel Corporation (Comp)	York, PA	03/02/09	02/27/09
65442	Freudenberg Nok (State)	Plymouth, MI	03/02/09	02/27/09
65443	Johnson Controls (Comp)	Columbia, TN	03/02/09	02/11/09
65444	Graphic Visual Solution, Inc. (Comp)	Greensboro, NC	03/02/09	02/27/09
65445	ASML (Wkrs)	Boise, ID	03/02/09	02/25/09
65446	GlaxoSmithKline (Wkrs)	Collegeville, PA	03/02/09	02/27/09
65447	BHP Billiton (Comp)	Miami, AZ	03/02/09	02/27/09
65448	K & K Screw Products, LLC (State)	East China, MI	03/02/09	02/27/09
65449	Kamin, LLC (Wkrs)	Sandersville, GA	03/02/09	02/26/09
65450	Akzo Nobel Coatings, Inc. (Wkrs)	High Point, NC	03/02/09	02/23/09
65451	Reynolds Food Packaging (Union)	Grove City, PA	03/02/09	02/02/09
65452	Newport Precision, Inc. (Wkrs)	Newport, TN	03/03/09	03/02/09
65453	Tokyo Electron Massachusetts (State)	Beverly, MA	03/03/09	02/25/09
65454	Mid-Columbia Lumber and Box (State)	Madras, OR	03/03/09	03/02/09
65455	Graphic Visual Solutions, Inc. (Comp)	Greensboro, NC	03/03/09	02/27/09
65456	Silver King Refrigeration, Inc. (State)	Plymouth, MN	03/03/09	03/02/09
65457	American Standard Brands (Wkrs)	Mansfield, OH	03/03/09	02/25/09
65458	Diversified Machine, Inc. (Comp)	Milwaukee, WI	03/03/09	02/27/09
65459	Carbone of America Industries Corp. (IUECWA)	St. Marys, PA	03/03/09	03/02/09
65460	Flabeg Corporation (USW)	Brackenridge, PA	03/03/09	02/27/09
65461	Wood Grain Millworks, Inc. (State)	Prineville, OR	03/03/09	03/02/09
65462	Sekisui Voltek, LLC (Wkrs)	Coldwater, MI	03/03/09	03/02/09
65463	Century Land and Timber, Inc. (Comp)	Greenville, NC	03/04/09	02/27/09
65464	Delphi Steering (Comp)	Saginaw, MI	03/04/09	02/26/09
65465	Pinehurst Manufacturing, Inc. (Comp)	Albermarle, NC	03/04/09	03/03/09
65466	Conoco-Phillips (State)	Ponca City, OK	03/04/09	03/03/09

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 3/2/09 AND 3/6/09—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65467	Kenworth Truck Company (PACCAR, Inc.) (IAMAW)	Renton, WA	03/04/09	03/02/09
65468	Utah Stamping Company (Wkrs)	Clearfield, UT	03/04/09	03/03/09
65469	The Hershey Company (Wkrs)	Hershey, PA	03/04/09	02/05/09
65470	Fluidmaster, Inc. (Comp)	San Juan Capistrano, CA	03/04/09	03/03/09
65471	Nabors Drilling USA, LP (State)	Fruita, CO	03/04/09	02/27/09
65472	Lincoln Industrial Corporation (UAW)	St. Louis, MO	03/04/09	02/26/09
65473	Bakers Pride Oven Company, Inc. (Comp)	New Rochelle, NY	03/04/09	02/25/09
65474	Smart Apparel (US) Inc. (18951)	Quakertown, PA	03/04/09	03/04/09
65475	Mohawk Industries, Inc. (Wkrs)	Dillon, SC	03/04/09	02/04/09
65476	Valentine Tool and Stamping, Inc. (Comp)	Norton, MA	03/04/09	03/03/09
65477	Osborne and Osborne Wood Products (Wkrs)	Galax, VA	03/04/09	02/19/09
65478	Metaldyne (Comp)	Whitsett, NC	03/04/09	03/03/09
65479	Vaagen Bros. Lumber, Inc. (Comp)	Colville, WA	03/04/09	03/04/09
65480	Tech Group (State)	Van Buren, AR	03/04/09	03/03/09
65481	IM Flash Technologies, LLC (Wkrs)	Lehi, UT	03/04/09	03/02/09
65482	Northeast Pellets, LLC (Comp)	Ashland, ME	03/04/09	02/27/09
65483	Viasystems (Comp)	Newberry, SC	03/04/09	03/03/09
65484	Lineage Power (Comp)	Tustin, CA	03/04/09	02/26/09
65485	Sapa HE Tubing (USW)	Louisville, KY	03/04/09	03/03/09
65486	Ortho Pharmaceutical (State)	Manati, PR	03/04/09	03/04/09
65487	Boralex Sherman, LLC (Comp)	Stacyville, ME	03/04/09	03/02/09
65488	Great Lakes Recovery Systems (USW)	Ecorse, MI	03/04/09	02/18/09
65489	Tecumseh Products Company (Wkrs)	Paris, TN	03/04/09	02/17/09
65490	Mold-Tech Michigan (CWA)	Fraser, MI	03/04/09	02/19/09
65491	Mazer Corporation (Wkrs)	Dayton, OH	03/04/09	02/27/09
65492	Kimball Office (Wkrs)	Borden, IN	03/05/09	02/13/09
65493	Plains Cotton Cooperative Association (Comp)	Lubbock, TX	03/05/09	02/11/09
65494	Mega Brands (State)	Livingston, NJ	03/05/09	03/04/09
65495	Gerber Technology and Gerber Service (Comp)	New York, NY	03/05/09	03/04/09
65496	Ovonic Energy Products, Inc. (IUECWA)	Springboro, OH	03/05/09	03/05/09
65497	Masterbrand (Wkrs)	Littlestown, PA	03/05/09	03/04/09
65498	Mine Safety Appliances (Wkrs)	Callery, PA	03/05/09	02/23/09
65499	Celanese (Wkrs)	Pampa, TX	03/05/09	03/03/09
65500	Plum Creek MDF, Inc. (Comp)	Columbia Falls, MT	03/05/09	03/04/09
65501	R. H. Donnelley, Inc. (Wkrs)	Dunmore, PA	03/05/09	02/20/09
65502	Gerber Coburn and Gerber Service (Comp)	Fort Gibson, OK	03/06/09	03/02/09
65503	Gerber Technology (Comp)	Tolland, CT	03/06/09	03/02/09
65504	Telephan Videocom Services (Comp)	New Castle, DE	03/06/09	03/01/09
65505	Weiler Corporation (Comp)	Cresco, PA	03/06/09	03/04/09
65506	1928 Jewelry Company (Wkrs)	Burbank, CA	03/06/09	01/29/09
65507	Arcelor Mittal (Wkrs)	Marion, OH	03/06/09	03/04/09
65508	Camp-Hill Corporation (Wkrs)	McKeesport, PA	03/06/09	03/05/09
65509	Moose River Lumber Company, Inc. (Comp)	Moose River, ME	03/06/09	03/05/09
65510	Bemis Contract Group (Wkrs)	Lenoir, NC	03/06/09	03/05/09
65511	FMC Manufacturing, LLC (Wkrs)	Monmouth, IL	03/06/09	03/05/09
65512	AK Steel Corporation (IAMAW)	West Chester, OH	03/06/09	03/05/09
65513	Tyrone Mining, LLC (Wkrs)	Tyrone, NM	03/06/09	02/27/09

[FR Doc. E9–7097 Filed 3–30–09; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,796]

Tracy Evans Ltd, New York, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 9, 2009, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 27, 2009 and published in the **Federal Register** on February 23, 2009 (74 FR 8116).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination which was based on the finding that imports of designs and patterns for women's garments did not contribute importantly to worker separations at the subject plant and there was no shift of production to a country that is a party to a free trade agreement with the United States or a beneficiary country. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining domestic customers. In this instance, the subject firm did not sell designs and patterns for women's garments to outside domestic customers, thus a

survey was not conducted. The subject firm did not import designs and patterns for women's garments into the United States during the relevant period.

In the request for reconsideration the petitioner alleged that Tracy Evans transferred its U.S. operations to a foreign country. Furthermore, the petitioner referred to an article reporting a ''problematic industrial trend of garment jobs being outsourced to foreign countries within the garment district in New York City.''

When assessing eligibility for TAA, the Department exclusively considers production of articles like or directly competitive with the ones manufactured at the subject firm during the relevant period (one year prior to the date of the petition). The issue of a shift in production by the subject firm to a foreign country was addressed during the initial investigation. It was revealed that the subject firm did not shift production of designs and patterns for women's garments during the relevant period.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) A mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 13th day of March, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7101 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,792]

Aetrium Corporation, Corporate Division, North St. Paul, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2008 in response to a petition filed by a State agency representative on behalf of workers of Aetrium Corporation, Corporate Division, North St. Paul, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7124 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,343]

Air Products and Chemicals Inc., Electronics Division, Easton, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a petition filed by a company official on behalf of workers of Air Products and Chemicals Inc., Electronics division, Easton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7109 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,386]

ANP Dimensional Lumber; Ogema, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a worker petition filed on behalf of workers at ANP Dimensional Lumber, Ogema, Wisconsin.

The petitioners have requested that petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7146 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,774]

Anthology, Inc., A Division of R. R. Donnelley & Sons Company, Pre-Media Technologies Division; Arlington Heights, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 23, 2008 in response to a petition filed on behalf of the workers at Anthology, Inc., a Division of R. R. Donnelley & Sons Company, Pre-Media Technologies Division, Arlington Heights, Illinois.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7123 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,326]

Archway Cookies, LLC; Ashland, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 27, 2008 in response to a petition filed on behalf of workers and former workers of Ashland Cookies, LLC, Ashland, Ohio.

The petitioning workers have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7122 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,426]

The Bergquist Company, Touch Screen Division, Including On-Site Leased Workers of Express Professionals and Aerotek, Cannon Falls, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a worker petition filed by a company official on behalf of workers of The Bergquist Company, Touch Screen Division, Cannon Falls, Minnesota. The worker group includes on-site workers from Express Professionals and Aerotek.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7149 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,202; TA–W–65,202A]

Bright Wood Corporation; Madras, OR; Bright Wood Corporation, Redmond, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a worker petition filed by a company official on behalf of workers of Bright Wood Corporation, Madras, Oregon (TA–W–65,202) and Bright Wood Corporation, Redmond, Oregon (TA–W–65,202A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7142 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,436]

Continental Automotive Systems U.S., Inc.; Elkhart, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2009, in response to a worker petition filed by a company official on behalf of workers at Continental Automotive Systems U.S., Inc., Elkhart, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7112 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,838]

Crosby, National Swage Division; Jacksonville, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2009 in response to a worker petition filed by a state agency representative on behalf of workers of Crosby, National Swage Division, Jacksonville, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7125 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,136]

Cummins Power Generation; Fridley, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2009 in response to a worker petition filed by the Minnesota State Workforce Office on behalf of workers of Cummins Power Generation, Fridley, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7107 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,092]

Detroit Diesel Specialty Tool Company, a Division of Detroit Diesel Corporation, a Subsidiary of Daimler Trucks North America, LLC; Cambridge, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2009 in response to a worker petition filed by workers of Detroit Diesel Specialty Tool Company, a division of Detroit Diesel Corporation, a subsidiary of Daimler Trucks North America, LLC, Cambridge, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7134 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,046]

Detroit Diesel Remanufacturing, East Division; Byesville, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2009 in response to a petition filed by a company official on behalf of workers of Detroit Diesel Remanufacturing—East Division, Byesville, Ohio.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 16th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7132 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,419]

EDS, An HP Company, Project Management Delivery Division; Lansing, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a petition filed on behalf of workers of EDS, an HP Company, Project Management Delivery Division, Lansing, Michigan.

The petition has been deemed invalid. Two of the petitioners did not provide complete information. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7111 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,192]

Emerson Network Power; Tempe, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a petition filed by a company official on behalf of workers of Emerson Network Power, Tempe, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7108 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,959]

Emerson Network Power—Embedded Computing Division, a Subsidiary of Emerson Electric; Marlborough, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2009 in response to a petition filed by a company official on behalf of workers of Emerson Network Power—Embedded Computing Division, a subsidiary of Emerson Electric, Marlborough, Massachusetts.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 18th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7130 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,226]

Formtek, Inc.; Clinton, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2009 in response to a petition filed on behalf of the workers at Formtek, Inc., Clinton, Maine.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7143 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,908]

Genmar Minnesota, Inc., a Subsidiary of Genmar Holdings, Inc.; Little Falls, MN; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2009 in response to a petition filed by the Minnesota state TAA Coordinator on behalf of workers of Genmar Minnesota, Inc., a subsidiary of Genmar Holdings Inc., Little Falls, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 17th day of March, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7129 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,002]

Gerald Logging; Eureka, MT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2009 in response to a petition filed by a company official on behalf of workers of Gerald Keller Logging, Eureka, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7105 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,107]

Hol-Mac Corporation; Bay Springs, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2009 in response to a worker petition filed by workers of Hol-Mac Corporation, Bay Springs, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7135 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,418]

The Jim C. Hamer Company; Kenova, WV; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a worker petition filed by a company official on behalf of workers of The Jim C. Hamer Company, Kenova, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7148 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,081]

Le Sueur, Inc.; Lesueur, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2009 in response to a worker petition filed by the Minnesota TAA Coordinator on behalf of workers at Le Sueur, Inc., LeSueur, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7133 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,130]

Leggett and Platt, Inc.; Simpsonville, KY; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2009 in response to a petition filed by a company official on behalf of workers of Leggett and Platt, Inc., Simpsonville, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7138 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,068]

Littelfuse, Incorporated; Arcola, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2009 in response to a petition filed on behalf of a One-Stop Operator/Partner for Littelfuse, Incorporated, Arcola, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7106 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,841]

Mar/Tron; Flippin, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2009 in response to a petition filed by a company official on behalf of workers of Mar/Tron, Flippin, Arkansas.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7127 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,411]

Marmon Keystone Corporation; Butler, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a worker petition filed by United Steelworkers Union, Local 8042 on behalf of workers of Marmon Keystone Corporation, Butler, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7147 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,137]

New Page Corporation, a Subsidiary of Cerberus Capital Management, LP; Rumford, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2009 in response to a petition filed by a company official, the International Brotherhood of United Electrical Workers, Local 2144, and the United Steel Workers, Local 900, on behalf of workers of New Page Corporation, a subsidiary of Cerberus Capital Management, LP, Rumford, Maine.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7140 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,133]

Ogden Manufacturing, Inc., Edinboro Plant, a Subsidiary of Chromalox, Inc.; Edinboro, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2009 in response to a worker petition filed by a company official on behalf of workers of Ogden Manufacturing, Inc., Edinboro Plant, a subsidiary of Chromalox, Inc., Edinboro, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7139 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,305]

Samuel Steel Pickling Company; Twinsburg, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed on behalf of workers of Samuel Steel Pickling Company, Twinsburg, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7145 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,395]

Sappi Paper Products; Westbrook, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a petition filed by the United Steelworkers Union, Local 1069, on behalf of the workers at SAPPI Fine Paper, N.A., Westbrook, Maine.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7110 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,456]

Silver King Refrigeration, Inc.; Plymouth, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2009 in response to a worker petition filed by the Minnesota State Workforce Office on behalf of workers of Silver King Refrigeration, Inc., Plymouth, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7150 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,839]

Sony Electronics, Inc., Sony Technology Center—Pittsburgh, TV Assembly Division, Pittsburgh Customer Satisfaction Center Division; Mt. Pleasant, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2009 in response to a petition filed by a company official on behalf of workers of Sony Electronics, Inc., Sony Technology Center—Pittsburgh, TV Assembly Division, Pittsburgh Customer Satisfaction Service Center Division, Mt. Pleasant, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7126 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,114]

SPS Technology; Waterford, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2009 in response to a petition filed on behalf of workers at SPS Technology, Waterford, Michigan.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7136 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,124]

Stanley Works; New Britain, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2009 in response to a worker petition filed by the Connecticut Rapid Response Coordinator on behalf of workers at Stanley Works, New Britain, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7137 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,843]

TDK Components USA, Inc.; Peachtree City, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 9, 2009 in response to a petition filed by a company official on behalf of workers of TDK Components USA, Inc., Peachtree City, Georgia.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7128 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,201]

Toho Tenax America, Inc.; Rockwood, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a worker petition filed by a company official on behalf of workers of Toho Tenax America, Inc., Rockwood, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7141 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,006]

Warren Corporation; Stafford Springs, CT; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2009 in response to a petition filed by a State of Connecticut Workforce Office representative on behalf of workers of Warren Corporation, Stafford Springs, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7131 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,928]

Advanced Micro Devices, Inc., Assembly Process Division; Sunnyvale, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2009, in response to a worker petition filed on behalf of workers at Advanced Micro Devices, Inc., Assembly Process Division, Sunnyvale, California.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7103 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,581]

Form Tech Industries, LLC; Minverva, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 12, 2009 in response to a petition filed by a company official on behalf of workers of Form Tech Industries, LLC, Minerva, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7095 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,947]

Philip Morris USA, Cabarrus Manufacturing Plant, a Subsidiary of Altria Group, Inc.; Concord, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 19, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on February 6, 2009. The Notice of Determination was published in the **Federal Register** on March 3, 2009 (74 FR 9283).

The initial investigation resulted in a negative determination based on the finding that imports of cigarettes did not contribute importantly to worker separations at the subject firm. The investigation revealed that the subject firm shifted production of cigarettes to foreign countries during the period under investigation. However, these products were not likely to be imported back to the United States.

In the request for reconsideration, the petitioner provided additional information regarding a shift in production of cigarettes to Colombia, Dominican Republic, Ecuador, El Salvador, and Mexico.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7104 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,819]

Teck-Washington, Inc.; Pend Oreille Mine; a Subsidiary of Teck-American, Inc.; Metaline Falls, WA; Notice of Revised Determination on Reopening

The Department, on its own motion, reopened its investigation for workers and former workers of Teck-Washington, Inc., Pend Oreille Mine, Metaline Falls, Washington. The workers produce zinc concentrate.

The initial investigation resulted in a negative determination issued on January 26, 2009, based on the finding that there were no increased imports of zinc concentrate, nor did the subject firm shift production of zinc concentrate to a foreign country. Since the workers were denied eligibility to apply for trade adjustment assistance (TAA) they were also denied eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8116).

New information obtained by the Department shows that there was a shift in production of zinc concentrate from the workers' firm to Mexico.

Employment at the subject firm has declined.

Based on these findings, it is determined in this case that the requirements of (a)(2)(B) of Section 222 have been met.

In order for the Department to issue a certification of eligibility to apply for alternative trade adjustment assistance ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions in the industry are adverse.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that there was a shift in production by the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Teck-Washington, Inc., Pend Oreille Mine, A Subsidiary of Teck-American, Inc., Metaline Falls, Washington, who became totally or partially separated from employment on or after January 6, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7102 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,669]

Century Furniture, LLC, Chair Upholstery Campus and Upholstery Division; Hickory, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By applications dated February 9, 2009, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on January 12, 2009 and published in the **Federal Register** on February 2, 2009 (74 FR 5871).

The initial investigation resulted in a negative determination based on the finding that criteria (a)(2)(A)(I.A) and (a)(2)(B)(II.A) have not been met. The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner provided additional information regarding employment and layoffs at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 13th day of March, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–7100 Filed 3–30–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date and Time: May 1, 2009, 8:30 a.m.–5 p.m. (EDT).

Place: The National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Maggie Whiteman, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To discuss strategic priorities in computing. To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of research, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: March 26, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–7091 Filed 3–30–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33421; NRC–2009–0143]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Nuclear Materials License No. 29–30119–01, for Termination of the License and Unrestricted Release of the Medarex, Incorporated's Facility in Bloomsbury, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5269; or by e-mail: *dennis.lawyer@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–30119–01. This license is held by Medarex, Incorporated (the Licensee), for its facilities located at 519 Route 173 West, Bloomsbury, New Jersey (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated December 1, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's December 1, 2008, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 29–30119–01 was issued on February 28, 1994, pursuant

to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is situated within a 164,130 square foot building, and consists of general office space and laboratories. The Facility is located in a mixed rural/residential area. Within the Facility, use of licensed materials with a half-life of greater than 120 days was confined to Room 115A. The area of Room 115A totaled 229 square feet.

In March 2006, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen 3. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by this radionuclide.

The Licensee conducted a final status survey in November 2008. This survey covered Room 115A. The final status survey report was attached to the Licensee's amendment request dated December 1, 2008. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the New Jersey Department of Environmental Protection for review on January 28, 2009. On February 26, 2009, the New Jersey Department of Environmental Protection responded by letter. The State agreed with the conclusions of the EA but noted there was use of radioactive material in an additional area, specifically Room 145A. NRC noted that while the Licensee included Room 145A in its final status survey, the half-life of radioactive materials used in Room 145A did not exceed 120 days. Therefore, in accordance with the categorical exclusion described in 10 CFR 51.22(c)(20), no environmental assessment is required for Room 145A.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and

that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities;'' and

5. Medarex, Incorporated termination request letter dated December 1, 2008 (ML083510774).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 24th day of March.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–7153 Filed 3–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on April 16–17, 2009, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 16, 2009—8:30 a.m. until the conclusion of business

Friday, April 17, 2009—8:30 a.m.–12 p.m.

The Subcommittee will discuss seismic-related issues. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael Lee (Telephone: 301–415–6887) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 24, 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–7276 Filed 3–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 30, April 6, 13, 20, 27, May 4, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of March 30, 2009

There are no meetings scheduled for the week of March 30, 2009.

Week of April 6, 2009—Tentative

There are no meetings scheduled for the week of April 6, 2009.

Week of April 13, 2009—Tentative

Wednesday, April 15, 2009.

9:30 a.m. Briefing on NRC Corporate Support (Public Meeting) (Contact: Karen Olive, 301–415–2276)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Thursday, April 16, 2009

1:30 p.m. Briefing on Human Capital and EEO (Public Meeting) (Contact: Kristin Davis, 301–492–2266)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Friday, April 17, 2009.

9:30 a.m. Briefing on Low Level Radioactive Waste—Part 1 (Public Meeting) (Contact: Patricia Swain, 301–415–5405)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Friday, April 17, 2009.

1:30 p.m. Briefing on Low Level Radioactive Waste—Part 2 (Public Meeting) (Contact: Patricia Swain, 301–415–5405)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of April 20, 2009—Tentative

Thursday, April 23, 2009

2 p.m. Briefing on Radioactive Source Security (Public Meeting) (Contact: Kim Lukes, 301–415–6701)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of April 27, 2009—Tentative

There are no meetings scheduled for the week of April 27, 2009.

Week of May 4, 2009—Tentative

There are no meetings scheduled for the week of May 4, 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: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: March 26, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–7279 Filed 3–27–09; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 2–E under Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-annually on Form 2–E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

During the calendar year 2008, there were five filings of Form 2–E by three respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2–E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection and Form 2–E preparation and submission is four hours per filing or 20 hours for all respondents.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

Form 2–E does not involve any recordkeeping requirements. The information required by the form is mandatory and the information provided will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7087 Filed 3–30–09; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form SE, OMB Control No. 3235–0327, SEC File No. 270–289.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Form SE (17 CFR 239.64) is used by registrants to file paper copies of exhibits that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is a public document and is filed on occasion. Form SE is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 782 registrants file Form SE and it takes an estimated .10 hours per response for a total annual burden of 78 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must

be submitted to OMB within 30 days of this notice.

Dated: March 25, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7088 Filed 3–30–09; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form SH; OMB Control No. 3235–0646; SEC File No. 270–585.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form SH (17 CFR 249.326T) is required to be submitted to the Commission by institutional investment managers subject to the existing Form 13F (CFR 249.325) filing requirements on the first business day of each week in which the institutional investment manager has entered into any new short positions or closed part or all of any short positions with respect to any Section 13(f) (15 U.S.C. 78m(f)) securities except for options. The information provided under Form SH is mandatory and responses will be kept confidential. We estimate that 1,000 institutional investment managers subject to the Form 13F filing requirements will file Form SH to report the entry into short positions with respect to Section 13(f) securities. We estimate that each will file 36 Form SH reports during the nine-month period that Rule 10a–3T (17 CFR 240.10a–3T) will be in effect. We further estimate that each of the 1,000 institutional investment managers will spend an average of 20 hours preparing each Form SH. Therefore the estimated total reporting burden associated with Form SH is 720,000 hours (1,000 respondents × 20 hours per form × 36 forms).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7089 Filed 3–30–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28678; File No. 812–13588]

MetLife Insurance Company of Connecticut, et al.

March 25, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

APPLICANTS: MetLife Insurance Company of Connecticut (''MetLife of CT''), MetLife of CT Separate Account Eleven for Variable Annuities (''Separate Account Eleven''), MetLife of CT Separate Account QPN for Variable Annuities (''Separate Account QPN''), MetLife of CT Fund UL for Variable Life Insurance (''Fund UL''), MetLife of CT Fund UL III for Variable Life Insurance (''Fund UL III''), MetLife Investors Insurance Company (''MetLife Investors''), MetLife Investors Variable Annuity Account One (''VA Account One''), MetLife Investors Variable Annuity Account Five (''VA Account Five''), First MetLife Investors Insurance Company (''First MetLife Investors''), First MetLife Investors Variable Annuity Account One (''First VA Account One''), MetLife Investors USA Insurance Company (''MetLife Investors USA''), MetLife Investors USA Separate Account A (''Separate Account A''), Metropolitan Life Insurance Company (''MetLife''), Metropolitan Life Variable Annuity Separate Account I (''Separate Account I''), Metropolitan Life Variable Annuity Separate Account II (''Separate Account II''), General American Life Insurance Company (''General American'') (together with MetLife of CT, MetLife Investors, First MetLife Investors, MetLife Investors USA and MetLife, the ''Insurance Companies''), General American Separate Account Seven (''GA Separate Account Seven'') (together with Separate Account Eleven, Separate Account QPN, Fund UL, Fund UL III, VA Account One, VA Account Five, First VA Account One, Separate Account A, Separate Account I, and Separate Account II, the ''Separate Accounts''), Met Investors Series Trust (''MIST'') and Metropolitan Series Fund, Inc. (''Met Series Fund''). The Insurance Companies and the Separate Accounts are referred to as the ''Substitution Applicants.'' The Insurance Companies, the Separate Accounts and the Investment Companies are referred to as the ''Section 17 Applicants.''

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of certain series of the Investment Companies for shares of series of other registered investment companies held by the Separate Accounts to fund certain group and individual variable annuity contracts and variable life insurance policies issued by the Insurance Companies (collectively, the ''Contracts''). The Section 17 Applicants seek an order pursuant to Section 17(b) of the Act to permit certain in-kind transactions in connection with certain of the Substitutions.

FILING DATE: The application was filed on October 21, 2008, and an amended and restated application was filed on March 13, 2009 and March 24, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 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 issued contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

Applicants c/o Paul G. Cellupica, Chief Counsel—Securities Regulation and Corporate Services, MetLife Group, One MetLife Plaza, 27–01 Queens Plaza North, Long Island City, NY 11101 and Robert N. Hickey, Esq., Sullivan & Worcester LLP, 1666 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Alison T. White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. MetLife of CT is a stock life insurance company organized in 1863 under the laws of Connecticut. MetLife Investors is a stock life insurance company organized on August 17, 1981 under the laws of Missouri. First MetLife Investors is a stock life insurance company organized on December 31, 1992 under the laws of New York. MetLife Investors USA is a stock life insurance company organized on September 13, 1960 under the laws of Delaware. MetLife is a stock life insurance company organized in 1868 under the laws of New York. General American is a stock life insurance company organized in 1933 under the laws of Missouri.

2. Separate Account Eleven, Fund UL, Fund UL III, VA Account One, VA Account Five, First VA Account One, Separate Account A, Separate Account I and Separate Account II are registered under the Act as unit investment trusts for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.

3. Separate Account QPN is exempt from registration under the Act. Security interests under the Contracts have been registered under the Securities Act of 1933.

4. GA Separate Account Seven serves as separate account funding vehicles for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

5. MIST and Met Series Fund are each registered under the Act as open-end management investment companies of the series type, and their securities are registered under the Securities Act of 1933. Met Investors Advisory, LLC and Metlife Advisers, LLC serve as investment adviser to MIST and Met Series Fund, respectively.

6. The annuity contracts permit the Insurance Companies to substitute shares of one fund with shares of another, including a fund of a different registered investment company.

7. Each Insurance Company, on its behalf and on behalf of the Separate Accounts proposes to make certain substitutions of shares of 9 funds (the ''Existing Funds'') held in sub-accounts of its respective Separate Accounts for certain series (the ''Replacement Funds'') of MIST and Met Series Fund.

8. The proposed substitutions are as follows: shares of MetLife Moderate Strategy Portfolio for shares of DWS Conservative Allocation VIP; shares of MetLife Growth Strategy Portfolio for shares of DWS Growth Allocation VIP; shares of MetLife Balanced Strategy Portfolio for shares of DWS Moderate Allocation VIP; shares of Janus Forty Portfolio for shares of Janus (Aspen Series) Forty Portfolio; shares of MetLife Stock Index Portfolio for shares of Legg Mason Partners Variable Equity Index Portfolio; shares of PIMCO Total Return Portfolio for shares of PIMCO (VIT) Total Return Portfolio; shares of Pioneer Strategic Income Portfolio for shares of Pioneer Strategic Income VCT Portfolio; shares of BlackRock Bond Income Portfolio for shares of UIF Core Plus Fixed Income Portfolio; shares of Van Kampen Comstock Portfolio for shares of Van Kampen LIT Comstock Portfolio.

9. The following is a summary of the investment objectives and policies of each Existing Fund and its corresponding Replacement Fund. Additional information including asset sizes, risk factors and comparative performance history for each Existing Fund and Replacement Fund can be found in the Application.

Existing fund	Replacement fund
DWS Conservative Allocation VIP—seeks a balance of current income and long-term growth of capital with an emphasis on current income. The Portfolio invests in other DWS VIP portfolios. The Portfolio's target allocation is 60% in underlying portfolios which invest primarily in fixed-income securities and 40% in underlying portfolios which invest primarily in equity securities.	MetLife Moderate Strategy Portfolio—seeks high total return in the form of income and growth of capital, with a greater emphasis on income. The Portfolio invests in a diversified group of affiliated underlying funds. The Portfolio normally invests in accordance with targeted allocations of 50% to equity securities and 50% to fixed income securities. Changes between these asset classes will be in the range of plus or minus 10%.
DWS Growth Allocation VIP—seeks long-term growth of capital. The Portfolio invests in other DWS VIP portfolios. The Portfolio's target allocation is 25% in underlying portfolios which invest primarily in fixed income securities, and 75% in underlying portfolios which invest primarily in equity securities.	MetLife Growth Strategy Portfolio—seeks growth of capital. The Portfolio invests in a diversified group of affiliated underlying funds. The Portfolio normally invests in accordance with targeted allocations of 85% to equity securities and 15% to fixed income securities. Changes between these asset classes will be in the range of plus or minus 10%.
DWS Moderate Allocation VIP—seeks a balance of long-term growth of capital and current income with an emphasis on growth of capital. The Portfolio invests in other DWS VIP portfolios. The Portfolio's target allocation is 40% in underlying portfolios which invest primarily in fixed income securities and 60% in underlying portfolios which invest primarily in equity securities.	MetLife Balanced Strategy Portfolio—seeks a balance between a high level of current income and growth of capital with a greater emphasis on growth of capital. The Portfolio invests in a diversified group of affiliated underlying funds. The Portfolio normally primarily invests in accordance with targeted allocations of 65% to equity securities and 35% to fixed income securities. Changes between these asset classes will be in the range of plus or minus 10%.
Janus (Aspen Series) Forty Portfolio—seeks long-term growth of capital. The Portfolio normally invests primarily in a core group of 20–40 common stocks selected for their growth potential.	Janus Forty Portfolio—seeks long-term growth of capital. The Portfolio normally invests primarily in a core group of 20–40 common stocks selected for their growth potential.
Legg Mason Partners Variable Equity Index Portfolio—seeks investment results that, before expenses, correspond to the price and yield performance of the S&P 500 Index.	MetLife Stock Index Portfolio—seeks to equal the performance of the S&P 500 Index (before expenses).
UIF Core Plus Fixed Income Portfolio—seeks above-average total return over a market cycle of three to five years by investing primarily in a diversified portfolio of fixed income securities.	BlackRock Bond Income Portfolio—seeks a competitive total return primarily from investing in fixed-income securities.

Existing fund	Replacement fund
PIMCO (VIT) Total Return Portfolio—seeks maximum total return, consistent with preservation of capital and prudent investment management.	PIMCO Total Return Portfolio—seeks maximum total return, consistent with preservation of capital and prudent investment management.
Pioneer Strategic Income VCT Portfolio– seeks a high level of current income. Normally, the Portfolio invests at least 80% of its assets in debt securities.	Pioneer Strategic Income Portfolio—seeks a high level of current income. The Portfolio invests, under normal circumstances at least 80% of its assets in debt securities.
Van Kampen LIT Comstock Portfolio—seeks capital growth and income. Normally, the Portfolio invests at least 80% of its assets in common stocks.	Van Kampen Comstock Portfolio—seeks capital growth and income. Normally, the Portfolio invests at least 80% of its assets in common stocks.

10. The management fees, 12b–1 fees (if applicable), other expenses and total operating expenses for each Existing and Replacement Fund are as follows:

	Management fees (percent)	12b–1 fees (percent)	Other expenses (percent)	Waiver/ Reimbursement (percent)	Total expenses (percent)
Replacement Fund: MetLife Moderate Strategy Portfolio (Class B)	.07	.25	.65		.97
Existing Fund: DWS Conservative Allocation VIP (Class B)	.07	.25	1.01		1.33
Replacement Fund: MetLife Growth Strategy Portfolio (Class B)	.06	.25	.72		1.03
Existing Fund: DWS Growth Allocation VIP (Class B)	.07	.25	1.00		1.32
Replacement Fund: MetLife Balanced Strategy Portfolio (Class B)	.06	.25	.69		1.00
Existing Fund: DWS Moderate Allocation VIP (Class B)	.07	.25	.98		1.30
Replacement Fund: Janus Forty Portfolio (Class E)	.65	.15	.06		.86
Existing Fund: Janus (Aspen Series) Forty Portfolio (Service Class)	.64	.25	.06		.95
Replacement Fund: MetLife Stock Index Portfolio (Class D)	.25	.10	.04	[1] .01	.38
Existing Fund: Legg Mason Partners Variable Equity Index Portfolio (Class I)	.31		.08		.39
Replacement Fund: MetLife Stock Index Portfolio (Class B)	.25	.25	.04	[1] .01	.53
Existing Fund: Legg Mason Partners Variable Equity Index Portfolio (Class II)	.31	.25	.08		.64
Replacement Fund: Blackrock Bond Income Portfolio (Class A)	.38		.06	[1] .01	.43
Existing Fund: UIF Core Plus Fixed Income Portfolio (Class I)	.38		.27		.65
Replacement Fund: Blackrock Bond Income Portfolio (Class B)	.38	25	.06	[1] .01	.68
Existing Fund: UIF Core Plus Fixed Income Portfolio (Class II)	.38	.35	.27		1.00
Replacement Fund: PIMCO Total Return Portfolio (Class B)	.48	25	.04		.77
Existing Fund: PIMCO (VIT) Total Return Portfolio (Admin Class)	.25		.58		.83
Replacement Fund: Pioneer Strategic Income Portfolio (Class E)	.60	.15	.09		.84
Existing Fund: Pioneer Strategic Income VCT Portfolio (Class II)	.65	.25	.18		1.08
Replacement Fund: Van Kampen Comstock Portfolio (Class A)	.58		.03		.61
Existing Fund: Van Kampen LIT Comstock Portfolio (Class I)	.56		.03		.59
Replacement Fund: Van Kampen Comstock Portfolio (Class B)	.58	25	.03		.86
Existing Fund: Van Kampen LIT Comstock Portfolio (Class II)	.56	.25	.03		.84

[1] Contractual fee waiver expiring 4/30/10 unless extended.

11. MetLife Advisers, LLC or Met Investors Advisory, LLC is the adviser of each of the Replacement Funds. Each Replacement Fund currently offers up to five classes of shares, four of which, Class A, Class B, Class D and Class E are involved in the substitutions.

12. The Applicants believe the substitutions will provide significant benefits to Contract owners, including improved selection of sub-advisers and simplification of fund offerings through the elimination of overlapping offerings.

13. As a result of the substitutions, the number of investment options under each Contract will either not be decreased, or, in those cases where the number of investment options is being reduced, continue to offer a significant number of alternative investment options (currently expected to range in number from 2 to 134 after the substitutions versus 2 to 134 before the substitutions).

14. Those substitutions which replace investment options advised by investment advisers that are not affiliated with the Substitution Applicants with funds for which either Met Investors Advisory, LLC or MetLife Advisers, LLC acts as investment adviser will permit each adviser, under the Multi-Manager Order, [IC–22824 (1997) and IC–23859 (1999)], to hire, monitor and replace sub-advisers as necessary to achieve optimal performance.

15. Contract owners with sub-account balances invested (through the separate account) in shares of the Replacement Funds will have either lower or substantially similar total expense ratios.

16. In the following substitutions, the management fee and/or applicable Rule 12b–1 fee of the Replacement Fund are either currently higher, or, at certain management fee breakpoints, may be higher than those of the respective Existing Fund: DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio; DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio; DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio; Legg Mason Partners Variable Equity Index Portfolio/MetLife Stock Index Portfolio; UIF Core Plus Fixed Income Portfolio/BlackRock Bond Income Portfolio; PIMCO (VIT) Total Return Portfolio/PIMCO Total Return Portfolio; and Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio.

17. The Substitution Applicants propose to limit Contract charges attributable to Contract value invested in the Replacement Funds following the proposed substitutions to a rate that would offset the difference in the expense ratio between each Existing Fund's net expense ratio and the net expense ratio for the respective Replacement Fund.

18. The substitutions will result in decreased net expense ratios, except for the Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio substitution. Moreover, there will be no increase in Contract fees and expenses, including mortality and expense risk fees and administration and distribution fees charged to the Separate Accounts as a result of the substitutions.

19. The Substitution Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles that are either substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes.

20. In addition, after the substitutions, neither Met Investors Advisory, LLC, MetLife Advisers, LLC nor any of their affiliates will receive compensation from the charges to the Separate Accounts related to the Contracts or from Rule 12b–1 fees or revenue sharing from the Replacement Funds in excess of the compensation currently received from the investment advisers or distributors of the Existing Funds.

21. The share classes of the Replacement Funds are either identical to or less than the share classes of the Existing Funds with respect to the imposition of Rule 12b–1 fees currently imposed, except with respect to the substitution of MetLife Stock Index Portfolio for Legg Mason Partners Variable Equity Index Portfolio and PIMCO Total Return Portfolio for PIMCO (VIT) Total Return Portfolio.

22. Each Met Series Fund Replacement Fund's Class B, Class D and Class E Rule 12b–1 fees can be raised to 0.50% of net assets by the Replacement Fund's Board of Directors without shareholder approval. Each MIST Replacement Fund's Class B and Class E Rule 12b–1 fees can be raised to 0.50% and 0.25%, respectively, of net assets by the Replacement Fund's Board of Trustees without shareholder approval. However, Met Series Fund and MIST represent that Rule 12b–1 fees of the Class B, Class D and Class E shares of the Replacement Funds issued in connection with the proposed substitutions will not be raised above the current rate without approval of a majority in interest of the respective Replacement Funds' shareholders after the substitutions.

23. The distributors of the Existing Funds pay to the Insurance Companies, or their affiliates, any 12b–1 fees associated with the class of shares sold to the Separate Accounts. Similarly, the distributors for MIST and Met Series Fund will receive from the applicable class of shares held by the Separate Accounts Rule 12b–1 fees in the same amount or a lesser amount than the amount paid by the Existing Funds, except as described above.

24. Further, in addition to any Rule 12b–1 fees, the investment advisers or distributors of the Existing Funds pay the Insurance Companies or one of their affiliates from 0 to 45 basis points for the Existing Funds' classes of shares involved in the substitutions. Following the substitutions, these payments will not be made on behalf of the Replacement Funds. Rather, 25, 10 and 15 basis points in Rule 12b–1 fees from the Replacement Funds (with respect to Class B, Class D and Class E shares, respectively) and profit distributions to members from the Replacement Funds' advisers, will be available to the Insurance Companies. These profits from investment advisory fees may be more or less than the fees being paid by the Existing Funds.

Applicants' Legal Analysis and Conditions

1. The Substitution Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the proposed substitutions.

2. Applicants represent that the Contracts permit the applicable Insurance Company, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by a sub-account of the Separate Accounts. The prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

3. By a supplement to the prospectuses for the Contracts and the Separate Accounts, each Insurance Company has notified all owners of the Contracts of its intention to take the necessary actions, including seeking the order requested by this Application, to substitute shares of the funds as described herein. The supplement has advised Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of Contract value (or annuity unit exchange) out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. The supplement also has informed Contract owners that the Insurance Company will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The supplement has also advised Contract owners that for at least 30 days following the proposed substitutions, the Insurance Companies will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of the Replacement Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge.

4. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the Separate Accounts.

5. The process for accomplishing the transfer of assets from each Existing Fund to its corresponding Replacement Fund will be determined on a case-by-case basis. In most cases, it is expected that the substitutions will be effected by redeeming shares of an Existing Fund for cash and using the cash to purchase shares of the Replacement Fund. In certain other cases, it is expected that the substitutions will be effected by redeeming the shares of an Existing Fund in-kind; those assets will then be contributed in-kind to the corresponding Replacement Fund to purchase shares of that Fund. All in-kind redemptions from an Existing Fund of which any of the Substitution Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to Signature Financial Group, Inc. (available December 28, 1999).

6. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or an Insurance Company's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including brokerage, legal, accounting, and other fees and expenses, will be paid by the

Insurance Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. No fees will be charged on the transfers made at the time of the proposed substitutions because the proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

7. In addition to the prospectus supplements distributed to owners of Contracts, within five business days after the proposed substitutions are completed, Contract owners will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all Contract value or cash value under a Contract invested in any one of the sub-accounts on the date of the notice to one or more other sub-accounts available under their Contract at no cost and without regard to the usual limit on the frequency of transfers from the variable account options to the fixed account options. The notice will also reiterate that (other than with respect to ''market timing'' activity) the Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or to impose any charges on transfers until at least 30 days after the proposed substitutions. The Insurance Companies will also send each Contract owner current prospectuses for the Replacement Funds involved to the extent that they have not previously received a copy.

8. Each Insurance Company also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

9. The Substitution Applicants agree that for those who were Contract owners on the date of the proposed substitutions, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four months following the date of the proposed substitutions, those Contract owners whose sub-account invests in the Replacement Fund such that the sum of the Replacement Fund's operating expenses and sub-account expenses (asset-based fees and charges deducted on a daily basis from sub-account assets and reflected in the calculation of sub-account unit values) for such period will not exceed, on an annualized basis, the sum of the Existing Fund's operating expenses and sub-account expenses for fiscal year 2007, except with respect to the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio, DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio, Legg Mason Partners Variable Equity Index Portfolio/MetLife Stock Index Portfolio, UIF Core Plus Fixed Income Portfolio/BlackRock Bond Income Portfolio, PIMCO (VIT) Total Return Portfolio/PIMCO Total Return Portfolio and Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio substitutions.

10. With respect to the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio, DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio, Legg Mason Partners Variable Equity Index Portfolio/MetLife Stock Index Portfolio, UIF Core Plus Fixed Income Portfolio/BlackRock Bond Income Portfolio, PIMCO (VIT) Total Return Portfolio/PIMCO Total Return Portfolio and Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio substitutions, the reimbursement agreement with respect to the Replacement Fund's operating expenses and sub-account expenses, will extend for the life of each Contract outstanding on the date of the proposed substitutions.

11. The Substitution Applicants further agree that, except with respect to the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio, DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio, Legg Mason Partners Variable Equity Index Portfolio/MetLife Stock Index Portfolio, UIF Core Plus Fixed Income Portfolio/BlackRock Bond Income Portfolio, PIMCO (VIT) Total Return Portfolio/PIMCO Total Return Portfolio and Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio substitutions, the Insurance Companies will not increase total separate account charges (net of any reimbursements or waivers) for any existing owner of the Contracts on the date of the substitutions for a period of two years from the date of the substitutions.

12. With respect to the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio, DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio, Legg Mason Partners Variable Equity Index Portfolio/MetLife Stock Index Portfolio, UIF Core Plus Fixed Income Portfolio/BlackRock Bond Income Portfolio, PIMCO (VIT) Total Return Portfolio/PIMCO Total Return Portfolio and Van Kampen LIT Comstock Portfolio/Van Kampen Comstock Portfolio substitutions, the agreement not to increase the separate account charges will extend for the life of each Contract outstanding on the date of the proposed substitutions.

13. The Substitution Applicants submit that, in general, there is little likelihood that significant additional assets, if any, will be allocated to the above-listed Existing Funds and, therefore, because of the cost of maintaining such Funds as investment options under the Contracts, it is in the interest of shareholders to substitute the applicable Replacement Funds which are currently being offered as investment options by the Insurance Companies.

14. In each case, the applicable Insurance Companies believe that it is in the best interests of the Contract owners to substitute the Replacement Fund for the Existing Fund. The Insurance Companies believe that in cases where the Replacement Fund has a new sub-adviser, the new sub-adviser will, over the long term, be positioned to provide at least comparable performance to that of the Existing Fund's sub-adviser. In certain substitutions, the same entity serves as sub-adviser for both the Existing Fund and the Replacement Fund.

15. The Substitution Applicants anticipate that Contract owners will be better off with the array of sub-accounts offered after the proposed substitutions than they have been with the array of sub-accounts offered prior to the substitutions.

16. The Substitution Applicants submit that none of the proposed substitutions is of the type that Section 26(c) was designed to prevent.

17. The Substitution Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the proposed substitutions by the Insurance Companies.

18. The Section 17 Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to permit the Insurance Companies to carry out each of the proposed substitutions, except for the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio and DWS Moderate Allocation

VIP/MetLife Balanced Strategy Portfolio substitutions.

19. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered company.

20. Because shares held by a separate account of an insurance company are legally owned by the insurance company, the Insurance Companies and their affiliates collectively own of record substantially all of the shares of MIST and Met Series Fund. Therefore, MIST and Met Series Fund and their respective funds are arguably under the control of the Insurance Companies notwithstanding the fact that Contract owners may be considered the beneficial owners of those shares held in the Separate Accounts. If MIST and Met Series Fund and their respective funds are under the control of the Insurance Companies, then each Insurance Company is an affiliated person or an affiliated person of an affiliated person of MIST and Met Series Fund and their respective funds. If MIST and Met Series Fund and their respective funds are under the control of the Insurance Companies, then MIST and Met Series Fund and their respective funds are affiliated persons of the Insurance Companies.

21. Regardless of whether or not the Insurance Companies can be considered to control MIST and Met Series Fund and their respective funds, because the Insurance Companies own of record more than 5% of the shares of each of them and are under common control with each Replacement Fund's investment adviser, the Insurance Companies are affiliated persons of both MIST and Met Series Fund and their respective funds. Likewise, their respective funds are each an affiliated person of the Insurance Companies.

22. The Insurance Companies, through their separate accounts in the aggregate own more than 5% of the outstanding shares of the following Existing Funds: Legg Mason Partners Variable Equity Index Portfolio, PIMCO (VIT) Total Return Portfolio, Pioneer Strategic Income VCT Portfolio, Van Kampen LIT Comstock Portfolio. Therefore, each Insurance Company is an affiliated person of those funds.

23. Because the substitutions other than the DWS Conservative Allocation VIP/MetLife Moderate Strategy Portfolio, DWS Growth Allocation VIP/MetLife Growth Strategy Portfolio and DWS Moderate Allocation VIP/MetLife Balanced Strategy Portfolio substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliated persons. The proposed transactions may involve a transfer of portfolio securities by the Existing Funds to the Insurance Companies; immediately thereafter, the Insurance Companies would purchase shares of the Replacement Funds with the portfolio securities received from the Existing Funds. Accordingly, as the Insurance Companies and certain of the Existing Funds listed above, and the Insurance Companies and the Replacement Funds, could be viewed as affiliated persons of one another under Section 2(a)(3) of the Act, it is conceivable that this aspect of the substitutions could be viewed as being prohibited by Section 17(a).

24. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

25. The Section 17 Applicants submit that for all the reasons stated above the terms of the proposed in-kind purchases of shares of the Replacement Funds by the Insurance Companies, including the consideration to be paid and received, as described in this Application, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also submit that the proposed in-kind purchases by the Insurance Companies are consistent with the policies of: (a) MIST and of its Janus Forty, PIMCO Total Return, Pioneer Strategic Income and Van Kampen Comstock Portfolios; and (b) Met Series Fund and of its MetLife Stock Index and BlackRock Bond Income Portfolios, as recited in the current registration statements and reports filed by each under the Act. Finally, the Section 17 Applicants submit that the proposed substitutions set forth above are consistent with the general purposes of the Act.

26. To the extent that the in-kind purchases by the Insurance Company of the Replacement Funds' shares are deemed to involve principal transactions among affiliated persons, the procedures described below should be sufficient to assure that the terms of the proposed transactions are reasonable and fair to all participants. The Section 17 Applicants maintain that the terms of the proposed in-kind purchase transactions, including the consideration to be paid and received by each fund involved, are reasonable, fair and do not involve overreaching principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Contract owners will not suffer any adverse tax consequences as a result of the substitutions. The fees and charges under the Contracts will not increase because of the substitutions. Even though the Separate Accounts, the Insurance Companies, MIST and Met Series Fund may not rely on Rule 17a–7, the Section 17 Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. In addition, as stated above, the in-kind redemptions will only be made in accordance with the conditions set out in the *Signature Financial Group* no-action letter (December 29, 1999).

27. The boards of MIST and Met Series Fund have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the series of each may purchase and sell securities to and from their affiliates. The Section 17 Applicants will carry out the proposed Insurance Company in-kind purchases in conformity with all of the conditions of Rule 17a–7 and each series' procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Replacement Fund from overreaching that Rule 17a–7 provides

to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, the Insurance Companies (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each fund involved valued in accordance with the procedures disclosed in its respective investment company registration statement and as required by Rule 22c–1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed in kind purchase transactions.

28. The sale of shares of Replacement Funds for investment securities, as contemplated by the proposed Insurance Company in-kind purchases, is consistent with the investment policies and restrictions of the Investment Companies and the Replacement Funds because (a) the shares are sold at their net asset value, and (b) the portfolio securities are of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Met Investors Advisory, LLC, MetLife Advisers, LLC and the sub-adviser, as applicable, will examine the portfolio securities being offered to each Replacement Fund and accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction.

29. The Section 17 Applicants submit that the proposed Insurance Company in-kind purchases are consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

30. The Section 17 Applicants represent that the proposed in-kind purchases meet all of the requirements of Section 17(b) of the Act and request that the Commission issue an order pursuant to Section 17(b) of the Act exempting the Separate Accounts, the Insurance Companies, MIST, Met Series Fund and each Replacement Fund from the provisions of Section 17(a) of the Act to the extent necessary to permit the Insurance Companies on behalf of the Separate Accounts to carry out, as part of the substitutions, the in-kind purchase of shares of the Replacement Funds which may be deemed to be prohibited by Section 17(a) of the Act.

Conclusion

Applicants assert that for the reasons summarized above that the proposed substitutions and related transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7086 Filed 3–30–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59615; File No. SR–BX–2009–005]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Establish New Fees for Services Available to Members and Non-Members

March 20, 2009.

I. Introduction

On January 14, 2009, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt fees applicable to members and non-members in connection with its cash equities trading business. The proposed rule change was published for comment in the **Federal Register** on February 4, 2009.[3] The Commission did not receive any comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Pursuant to SR–BSE–2008–48, the Exchange adopted a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equities trading.[4] The new rules, which are designated as the ''Equity Rules,'' are substantially based on the rules of The NASDAQ Stock Market LLC (the ''NASDAQ Exchange''). Through this proposal, the Exchange seeks to establish non-member and member fees for its cash equities trading business.[5] The Exchange states that the proposed fee schedule is similar to the NASDAQ Exchange but differs in that it omits several fees that are not pertinent to the Exchange's business and differs in the level of certain fees.

A. Market Data

The Exchange proposes to establish fees for its BX TotalView data product. Like NASDAQ TotalView, BX TotalView will provide all displayed quotes and orders in the market, with attribution to the relevant market participant, at every price level, as well as total displayed anonymous interest at every price level. In recognition of the start-up nature of the new market, the data feed will be provided free of charge to subscribers and distributors for the first year of operation.

After the initial free period, subscribers to BX TotalView will pay a monthly charge of $20; however, new subscribers receiving BX TotalView for the first time after the expiration of the one-year introductory period will be able to use the product free of charge for an individual 30-day trial period.[6] Distributors of BX TotalView will pay a $1,000 monthly fee to receive the data directly from the Exchange, since the Exchange incurs costs to support the connection to each direct distributor; indirect distributors (*i.e.*, those receiving data from a direct distributor) would not pay this charge.[7] Distributors will also pay a $500 monthly fee to distribute the data feed internally (*i.e.*, to employees) and a $1,250 monthly fee to distribute to external customers.[8]

All of the foregoing fees will be waived during the initial free period.

Upon approval of this filing, however, the Exchange will begin to assess a limited number of fees in connection with data provision. Specifically, extranet providers that connect to the Exchange to provide direct access connectivity to market data will be charged a monthly access fee of $750 for each technical configuration used to provide a connection to a recipient's site.[9] In addition, data distributors will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59307 (January 28, 2009), 74 FR 6069 (SR–BX–2009–005).

[4] Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48).

[5] The Exchange previously adopted fees applicable solely to its members. *See* Securities Exchange Act Release No. 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR–BX–2009–004).

[6] *See* proposed Equity Rule 7023.

[7] *See* proposed Equity Rule 7019.

[8] *Id.*

[9] *See* proposed Equity Rule 7025.

pay an annual administrative fee of $500 for delayed distribution of data, and $1,000 for real-time distribution.[10]

The Exchange is establishing the foregoing fee structure to be similar to the structure for NASDAQ TotalView, but at lower overall levels than fees for NASDAQ TotalView. The Exchange states that the lower fee levels reflect the start-up nature of the Exchange's new equities trading platform, and will help to promote competition among exchanges with respect to the quoting and trading services. Specifically, the Exchange believes that the fees it sets for BX TotalView will help to attract order flow to the Exchange. At inception, the Exchange will have zero market share. The Exchange believes that it must set its fees, including data fees, with a view to attracting order flow to increase market share. The Exchange states that due to the existence of alternatives for market participants to determine market depth—such as other depth of book products that may be associated with markets with more liquidity, or order routing strategies designed to ascertain market depth—the Exchange has incentives to ensure that its fees for BX TotalView are set reasonably.

The Exchange believes that proposed fee structure for BX TotalView is not unreasonably discriminatory, since the fees for subscribers are uniform for all subscribers, and the fees for distributors are uniform except with respect to reasonable distinctions between internal and external distribution and direct and indirect receipt of data. The Exchange also believes that the fees are fair and reasonable in that they compare favorably to fees charged by other exchanges for comparable products.

B. Port Fees

In order to receive BX TotalView, subscribers must establish connectivity to the Exchange through extranets, direct connection, and Internet-based virtual private networks. The Exchange proposes to charge fees for the ports required to establish these connections, just as it will charge for access ports used to enter orders into the market.[11] A port used for order entry cannot also be used to receive data; thus, a member seeking to enter orders and receive data would require at least two port pairs. Prior to approval of this filing, the Exchange will provide data ports free of charge. Thereafter, the Exchange will generally charge the same fees for data ports that it charges for order entry ports: $400 per month per port pair, plus an additional $200 per month for each Internet port that requires additional bandwidth due to the demands of the particular subscriber. In addition, subscribers wishing to obtain data will also have the option of obtaining a Multicast ITCH® port pair at a fee of $1000 per month.[12] The differences between these two options relate to speed and processes for verifying completeness of the data. The standard port pair option provides one copy of the data and uses procedures under which the system receiving the data communicates back to the Exchange to verify completeness of the information. Under the Multicast ITCH option, two copies of the data are provided without these verification processes, and consequently at a higher rate of speed. Because the recipient of the data receives two copies, it can, if it wishes, undertake its own verification by programming its systems to compare the two copies. The fees for data ports are identical to the comparable fees charged by the NASDAQ Exchange.

C. Testing

The Exchange proposes to establish fees for its testing facility, to be set at levels identical to the fees for the NASDAQ Exchange's testing facility.[13] In general, the Exchange will charge $285 per hour for an active connection during the facility's normal operating hours and $333 per hour for an active connection at other times. Because the fees are waived for testing of new, enhanced, or modified services and/or software offered by the Exchange, as well as for modifications initiated by the Exchange and for a 30-day period for new subscribers to existing services, the testing fees will not be charged until the later of (i) approval of this filing, or (ii) 30 days after the launch of the NASDAQ OMX BX Equities System. Thereafter, as provided in the rule, the fees will be waived for a 30-day period for each new market participant.

D. Other Fees

Other fee rules relate to special data requests[14] and partial month charges[15] and are comparable to corresponding NASDAQ Exchange rules.

III. Discussion

The Commission has reviewed carefully the proposed rule change and 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.[16] In particular, it is consistent with Section 6(b)(4) of the Act,[17] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[19] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[20] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[21]

[10] *See* proposed Equity Rule 7035. These annual administrative fees can be waived for colleges and universities receiving the data for research and educational purposes.

[11] *See* Securities Exchange Act Release No. 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR–BX–2009–004) (establishing Equity Rule 7015 to charge fees for ports used by members to enter orders).

[12] Equity Rule 7015.

[13] *See* proposed Equity Rule 7030(d).

[14] *See* proposed Equity Rule 7030(b). This provision allows the Exchange to recoup costs associated with responding to *ad hoc* requests for market data, such as requests that may be made by news reporters or academic researchers.

[15] *See* proposed Equity Rule 7031. This provision provides that market data distributors may elect to be billed on a prorated basis during the month of initiation or termination of service.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(8).

[20] 17 CFR 242.603(a).

[21] BX is an exclusive processor of BX depth-of-book data under Section 3(a)(22)(B) of the Act, 15

Continued

A. BX Market Data & Port Fees

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[22] In the NYSE Arca Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.'' [23] It noted that the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [24] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the Commission will approve a proposal unless it determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.'' [25]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act and Rule 603 of Regulation NMS do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data. Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans.[26] In contrast, individual exchanges and other market participants distribute non-core data voluntarily.[27] The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees.[28] Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to use competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6 and Rule 603.[29] Because BX's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order.

The proposal before the Commission, in part, relates to fees for BX TotalView which are non-core, depth of book market data products, and as in the Commission's NYSE Arca Order analysis at least two broad types of significant competitive forces applied to BX in setting the terms of this proposal: (i) BX's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing BX's depth-of-book order data.

Attracting order flow is the core competitive concern of any equity exchange, including BX. Attracting order flow is an essential part of a national securities exchange's competitive success. If a national securities exchange cannot attract order flow to its market, it will not be able to execute transactions. If a national securities exchange cannot execute transactions on its market, it will not generate transaction revenue. If a national securities exchange cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability. Table 1 below provides a useful recent snapshot of the state of competition in the U.S. equity markets in the month of January 2009: [30]

TABLE 1—REPORTED SHARE VOLUME IN U.S.-LISTED EQUITIES DURING JANUARY 2009

[%]

Trading venue	All stocks	NYSE-Listed	NASDAQ-Listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that BX must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on BX to act reasonably in setting its fees for BX market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom BX must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of

U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[22] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca-2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[23] *Id.* at 74771.

[24] *Id.* at 74782.

[25] *Id.* at 74781.

[26] *See* 17 CFR 242.603(b). (''Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.'').

[27] *See* NYSE Arca Order at 74779.

[28] *Id.*

[29] *Id.*

[30] Source: ArcaVision (available at *http://www.arcavision.com*).

the same customers on whose orders it depends for competitive survival.[31]

In addition to the need to attract order flow, the availability of alternatives to BX's TotalView data significantly affect the terms on which BX can distribute this market data.[32] In setting the fees for its BX TotalView data, BX must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data.[33] Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[34] In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.[35]

For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.[36] The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as ''pinging'' orders that search out both displayed and nondisplayed size at all price points within an order's limit price.[37]

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on the BX in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the BX's compelling need to attract order flow, imposed significant competitive pressure on the BX to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the BX was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. Further, the Commission did not receive any comment letters raising concerns of a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder.

The Commission notes that BX is effectively entering the competitive markets for equities trading as a start-up venture. If its fees are not set at a level that will promote competition in these markets, potential users will simply continue to obtain services from the Exchange's multiple competitors. Accordingly, the Exchange must set fees for market data and transaction executions that promote the Exchange as a trading venue. If its fees are set at inappropriately high levels, market participants will seek to avoid using the Exchange, and the Exchange' market data will have little value to market participants. Thus, consistent with the analysis set forth in the NYSE Arca Order, the Exchange's operations, products and services must be designed to promote competition in order to succeed and provide market participants with viable and cost-effective alternatives to existing competitors.

B. Testing and Other Fees

The Exchange proposes to establish new fees for its testing facility at the rates of $285 per hour for an active connection during the facility's normal operating hours and $333 per hour for an active connection at other times. Under the proposal, the Exchange will waive fees for testing of new, enhanced, or modified services and/or software offered by the Exchange, as well as for modifications initiated by the Exchange and for a 30-day period for new subscribers to existing services, the testing fees will not be charged until the later of (i) approval of this filing, or (ii) 30 days after the launch of the NASDAQ OMX BX Equities System. Thereafter, fees will be waived for a 30-day period for each new market participant. The Commission notes that the Exchanges's new fees for its testing facility are at levels identical to the fees for the NASDAQ Exchange's testing facility.[38]

In addition, the Exchange proposes new fee rules related to special data requests to allow the Exchange to recoup costs associated with responding to *ad hoc* requests for market data, such as requests that may be made by news reporters or academic researchers.[39] The Exchange also proposes fees for partial month charges to enable market data distributors to elect to be billed on a prorated basis during the month of initiation or termination of service.[40] The Commission notes that these new fees for special data requests and partial month charges are similar to corresponding NASDAQ Exchange rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–BX–2009–005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7085 Filed 3–30–09; 8:45 am]

BILLING CODE

[31] *See* NYSE Arca Order at 74783.

[32] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g.*, *FTC* v. *Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC* v. *Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See*, *e.g.*, *Leegin Creative Leather Products* v. *PSKS, Inc.*, 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co.* v. *Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.*, 356 U.S. 1 (1958).

[33] *See* NYSE Arca Order at 74783.

[34] *Id.*

[35] *Id.*

[36] *See* NYSE Arca Order at 74784.

[37] *Id.*

[38] *See* proposed Equity Rule 7030(d).

[39] *See* proposed Equity Rule 7030(b).

[40] *See* proposed Equity Rule 7031.

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6562]

60-Day Notice of Proposed Information Collection: DS–0174, Application for Employment as a Locally Employed Staff or Family Member, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Application for Employment as a Locally Employed Staff or Family Member.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New collection.

- *Originating Office:* Bureau of Human Resources, Office of Overseas Employment (HR/OE).
- *Form Number:* DS–0174.
- *Respondents:* Candidates seeking employment at U.S. Missions abroad, including family members of Foreign Service, Civil Service, and uniformed service members officially assigned to the Mission and under Chief of Mission authority.
- *Estimated Number of Respondents:* 40,000.
- *Estimated Number of Responses:* 40,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 40,000.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain a benefit.

DATES: The Department will accept comments from the public up to 60 days from March 31, 2009.

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

- *E-mail: McCoyFV@state.gov.*
- *Mail (Paper, Disk, or CD–ROM Submissions):* U.S. Department of State—SA–1, HR/OE, Room 615H, Attention: Frank Venson McCoy, 2401 E Street NW., Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Frank Venson McCoy, Bureau of Human Resources, Office of Overseas Employment, U.S. Department of State, Washington, DC 20520, who may be reached on 202–261–8836 or at *McCoyFV@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The DS–0174, Application for Employment as a Locally Employed Staff or Family Member, is needed to meet information collection requirements for recruitments conducted at approximately 170 U.S. embassies and consulates throughout the world. Current employment application forms do not meet the unique requirements of Mission recruitment (*e.g.*, language skills and hiring preferences) under the FS Act of 1980 and 22 U.S.C. 2669(c). The DS –0174 is needed to improve data gathering and to clarify interpretation of candidate responses.

Methodology

Candidates for employment use the DS–0174 to apply for Mission-advertised positions throughout the world. Mission recruitments generate approximately 40,000 applications per year. Data that HR and hiring officials extract from the DS–0174 determines eligibility for employment, qualifications for the position, and selections according to Federal policies.

Dated: March 4, 2009.

Ruben Torres,

Director, HR/EX, Department of State.

[FR Doc. E9–7212 Filed 3–30–09; 8:45 am]

BILLING CODE 4710–15–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 09–02).

TIME AND DATE: 10 a.m. (EDT), April 2, 2009, The Millennium Center, Appalachian Ballroom A, 2001 Millennium Place, Johnson City, Tennessee.

STATUS: Open.

Agenda

Old Business

Approval of minutes of February 12, 2009, Board Meeting.

New Business

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee.

A. Annual price quote for directly served customer.

B. Seasonal Time-Of-Use and Seasonal Market Days pilot pricing for summer season.

4. Report of the Operations, Environment, and Safety Committee.

A. Contract with Siemens Energy, Inc., for parts and services for nuclear and fossil plants.

B. Contracts with AREVA NC, Inc., and Urenco Enrichment Company for uranium (nuclear fuels).

C. Contract extension with United States Enrichment Corporation for uranium hexafluoride and enrichment.

D. Contract with G–UB–MK for maintenance and modification work for fossil and hydro plants.

E. Contract with GE for combustion turbines alliance.

F. Renewables and clean energy purchases.

5. Report of the Community Relations and Energy Efficiency Committee.

A. Beech River Watershed Development Agency land sale.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 26, 2009.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E9–7266 Filed 3–27–09; 11:15 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974: Notice of System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice; correction of system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), the Tennessee Valley Authority (TVA) republished in full a notice of the existence and character of each TVA system of records. The notices were published at 73 FR 62788–62814, Oct. 21, 2008.

TVA is correcting the system of records notice, TVA–31, OIG Investigative Records–TVA.

DATES: This correction is effective March 31, 2009.

ADDRESSES: Address all comments concerning this notice to Mark R. Winter, Privacy Coordinator, TVA, 1101 Market Street (MP 3C), Chattanooga, TN 37402–2801.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter at (423) 751–6004.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4),

TVA republished in full a notice of the existence and character of each TVA system of records. The notices were published at 73 FR 62788–62814, Oct. 21, 2008.

TVA is correcting the system of records notice, TVA–31, OIG Investigative Records–TVA. The notice was last published at 73 FR 62807–62808. TVA is publishing the corrected notice in its entirety.

TVA is correcting the section entitled ''SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT'' to read ''This system is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.24.''

This exemption appeared as a proposed rule amending 18 CFR part 1301 at 58 FR 57972–57974, Oct. 28, 1993. It was published as a final rule at 61 FR 2111, Jan. 25, 1996.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

SYSTEM LOCATION:

Office of the Inspector General, TVA, Knoxville, TN 37902–1499. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (*e.g.*, coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831ee; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; Inspector General Act Amendments of 1988, Public Law 100–504, 102 Stat. 2515, and 2000 amendments to the Inspector General Act, Public Law 106–422, 114 Stat. 1872.

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

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters, or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information; and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee; the issuance of a security clearance; the conduct of a background or other investigation; or other matter within the purposes of this system of records.

To the public when: (1) The matter under investigation has become public knowledge, or (2) when the Inspector General determines that such disclosure is necessary (a) to preserve confidence in the integrity of the OIG investigative process, or (b) to demonstrate the accountability of TVA officers, or employees, or other individuals covered by this system; unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To the news media and public when there exists a legitimate public interest (e.g., to provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property.

To members of the President's Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

To members of the President's Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of TVA OIG to ensure that adequate internal safeguards and management procedures are maintained.

To appropriate agencies, entities, and persons when (a) TVA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) TVA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TVA or another agency or entity) that rely upon the compromised information; and (c) The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with TVA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, TVA, Knoxville, TN 37902–1499.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24. This system is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.24.

James W. Sample,

Director of Cyber Security.

[FR Doc. E9–7204 Filed 3–30–09; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 14, 2009.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0063.

Date Filed: March 10, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 2009.

Description: Application of A–Jet Aviation & Aircraft Management GmbH (''A–Jet'') requesting an exemption and a foreign air carrier permit authorizing A–Jet to engage in charter foreign air transportation of persons, property and mail to and from points in the United States to the full extent permitted by its homeland operating authority and the EU–U.S. open-skies agreement, as well as other charters pursuant to the prior approval requirements.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E9–7155 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 14, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0064.

Date Filed: March 11, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC12 North, Mid, South Atlantic—Middle East, Africa, Flex Fares Package (Memo NMS–ME 0296/ Memo NSM–AFR 0279).

Minutes: TC12 North, Mid, South Atlantic—Middle East, Africa. (Memo NMS–ME 0295/Memo NSM–AFR 0278).

Intended Effective Date: 1 May 2010.

Docket Number: DOT–OST–2009–0065.

Date Filed: March 11, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC2 Within Africa, Resolutions and Specified Fares Tables (Memo 0188).

Minutes: TC2 Within Africa, Within Middle East, Middle East–Africa. (Memo 0190, 0200, 0170).

Intended Effective Date: 1 May 2009.

Docket Number: DOT–OST–2009–0066.

Date Filed: March 11, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC2 Within Middle East, Resolutions and Specified Fares Tables (Memo 0198).

Minutes: TC2 Within Africa, Within Middle East, Middle East–Africa. (Memo 0190, 0200, 0170).

Intended Effective Date: 1 May 2009.

Docket Number: DOT–OST–2009–0067.

Date Filed: March 11, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC2 Within Middle East, Resolutions and Specified Fares Tables (Memo 0198).

Minutes: TC2 Within Africa, Within Middle East, Middle East–Africa (Memo 0190, 0200, 0170).

Intended Effective Date: 1 May 2009.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E9–7157 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Clair County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability (NOA) of the Final Environmental Impact Statement (FEIS) for the Blue Water Bridge Plaza Study and Section 4(f) Evaluation.

SUMMARY: This notice announces the availability of a Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for the Blue Water Bridge Plaza Study (BWB). This action is pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508). The FEIS discusses the recommended alternative to improve the United States inspection Facility at the Blue Water Bridge Plaza and the I–94/I–69 corridor in St. Clair County, Michigan; describes the environmental impacts of the proposed project and proposed mitigation; and addresses comments received on the Draft Environmental Impact Statement and Section 4(f) Evaluation issued in August 2007.

DATES: Any comments must be received on or before May 4, 2009. The FEIS waiting period ends 30 days after the U.S. Environmental Protection Agency publishes the BWB's NOA in the **Federal Register** (currently scheduled to be published on April 3, 2009).

ADDRESSES: *Document Availability:* Copies of the FEIS are available for public inspection and review on the project Web site: *http://www.michigan.gov/bluewaterbridgeproject* and at the following locations:

- Fort Gratiot Township, 3720 Keewahdin Road, Fort Gratiot, MI 48059.
- Port Huron City of, Office of the City Clerk, 100 McMorran Blvd., Port Huron, MI 48060.
- Port Huron Township, 3800 Lapeer Road, Port Huron, MI 48060.
- MDOT Region Office, 18101 W. Nine Mile Road, Southfield, MI 48075.
- MDOT Bureau of Transportation Planning, 425 W. Ottawa St., Lansing, MI 48933.
- MDOT Port Huron Transportation Service Center, 2127 11th Ave., Port Huron, MI 48060.
- St. Clair County Library, 210 McMorran Blvd., Port Huron, MI 48060.
- St. Clair County Planning Office, St. Clair County Bldg., 200 Grand River Ave., Port Huron, MI 48060.

Copies of the FEIS may be requested from Bob Parsons (Public Involvement and Hearings Officer) at the Michigan Department of Transportation, 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909 or by calling (517) 373–9534.

Comments: Send any comments on the FEIS to the Michigan Department of Transportation, c/o Bob Parsons (Public Involvement and Hearings Officer), 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909; Fax: (517) 373–9255; or e-mail: *parsonsb@michigan.gov*. Information regarding this proposed action is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Ryan Rizzo, Major Project Manager, at FHWA Michigan Division, 315 W. Allegan Street, Room 201; Lansing, MI 48933; by phone at (517) 702–1833, or e-mail at *Ryan.Rizzo@FHWA.DOT.US*. David Williams, Environmental Program Manager, FHWA Michigan Division, 315 W. Allegan Street, Room 201; Lansing, MI 48933; by phone at (517) 702–1820; or e-mail at *David.Williams@FHWA.DOT.US*.

SUPPLEMENTARY INFORMATION: The proposed federal action is to expand the Blue Water Bridge Plaza and improve the I–94/I–69 corridor. Improvements are needed on the Blue Water Bridge Plaza to provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Port Huron area to support the economies of Michigan, Ontario, Canada, and the United States and to support the mobility and security needs associated with national and civil defense.

Purpose and Need for the Project: The selected alternative must provide additional space for inspection booths, offices, docks to inspect and unload cargo, new security measures, and parking for cars and trucks needing inspection. The need for additional space and facilities is supported by several key issues including:

- Security issues.
- Introduction of new inspection technologies, procedures, and policies.
- Limited existing space to accommodate increased number of border inspection agents.
- Traffic conflicts and crash history.
- Access between the plaza and adjacent circulatory local roads.
- Traffic growth and traffic backups.
- Existing infrastructure conditions of the I–94/I–69 corridor.
- Upgrading the International Welcome Center.

Alternatives Evaluated: The DEIS evaluated three action alternatives in addition to a No-Build Alternative: City East Alternative, City West Alternative and the Township Alternative.

Recommended Alternative: Revisions to the City West (Preferred) Alternative were made to address the overall plaza size and layout, and reduce the social, economic and environmental impacts. These changes are presented in the FEIS as the Recommended Alternative.

The Recommended Alternative brings the existing elevated plaza (22′) down to grade, which requires the relocation of Pine Grove Avenue to the south and west of the plaza. It reduces the permanent size of the U.S. Port of Entry from 65 acres proposed in the Draft Environmental Impact Statement to 57 acres. Additional acreage would be required to relocate Pine Grove Avenue to the south and west of the expanded plaza as well as to construct the plaza project and maintain traffic during the construction phases of the project.

Authority: 42 U.S.C. 4321 *et seq.*, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) 23 CFR 771.117; and 23 U.S.C. 139(l)(l).

Issued on: March 20, 2009.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. E9–6857 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0289]

Filing Requirements of 49 U.S.C. 14123; The Motor Carrier Financial and Operating Statistics Program (the Annual Form M Filing); Application for Exemption From Swift Transportation Corporation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) published a **Federal Register** notice of an application by Swift Transportation Corporation (Swift Transportation) for an exemption from the requirement annually to report certain financial information (49 CFR 369.1). Swift Transportation stated that disclosing this information would cause competitive harm. The Agency received one comment to the public docket. The Agency has considered the comment and grants Swift Transportation's request for exemption.

DATES: This exemption is effective until December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Rhonda Scott, Office of Information Technology, IT Operations Division, (202) 366–4134; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Although 49 U.S.C. 14123 requires certain motor carriers annually to file financial and safety reports with FMCSA, subsection (c) authorizes exemptions from the filing requirements or from public release of the information. Exemption requests must comply with 49 CFR 369.9, and the request must be published in the **Federal Register**.

Swift Transportation's Application for Exemption

On December 14, 2007, Swift Transportation applied for an exemption under 49 CFR 369.9 from disclosing confidential business information to the public. A privately held corporation, Swift Transportation argued that disclosure of this information would result in competitive harm.

Comments

FMCSA published a **Federal Register** notice announcing the application on November 6, 2008 (73 FR 66095). One comment was submitted to the docket. The commenter concurred with the request on the ground that the data is not being used and the requirement is no longer needed.

FMCSA Decision

FMCSA reviewed the comment and the documentation submitted by the applicant. The Agency determined that Swift Transportation is not a publicly held corporation and that it provided sufficient support for the claim of competitive harm, both of which are preconditions for an exemption under 49 CFR 369.9. The Agency therefore grants the exemption, which will be effective from March 31, 2008 through December 31, 2011 (§ 369.9(g)).

Issued on: March 18, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–6460 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the 35th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held June 22–26, 2009 in Geneva, Switzerland. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda, and comments relative to a potential future rulemaking action regarding the use and applicability of international standards.

Information Regarding the UNSCOE TDG Meeting

DATES: Wednesday, June 17, 2009; 9:30 a.m.–12 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Conference Call Capability/Live Meeting Information: Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international.*

FOR FURTHER INFORMATION CONTACT: Mr. Duane Pfund, Director, Office of International Standards or Mr. Shane Kelley, International Transportation Specialist, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the 35th session of the UNSCOE TDG. The 35th session of the UNSCOE TDG is the first meeting in the current 2009–2010 biennium. The UNSCOE will consider proposals for the 16th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations which will come into force in the international regulations from January 1, 2013. Topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters;
- Listing, classification and packing;
- Electric storage systems;
- Miscellaneous proposals of amendments to the Model Regulations on the Transport of Dangerous Goods;
- Electronic data interchange (EDT) for documentation purposes;
- Cooperation with the International Atomic Energy Agency (IAEA);
- Global harmonization of transport of dangerous goods regulations with the UN Model Regulations;
- Guiding principles for the Model Regulations; and
- Issues relating to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

In addition, PHMSA is soliciting comments on how to further enhance harmonization for international transport of hazardous materials. PHMSA has finalized a broad international strategic plan and welcomes input on items which stakeholders believe should be included as specific initiatives within this plan. PHMSA's Office of International Standards Strategic Plan can be accessed at: *http://www.phmsa.dot.gov/hazmat/regs/intemational.*

Finally, PHMSA is soliciting comments regarding a potential future rulemaking action regarding the use of international regulations, in particular the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous

Goods by Air (ICAOTI) and the International Maritime Dangerous Goods Code (IMDG Code). PHMSA is considering proposing to mandate the use of these regulations for the international transportation (see 49 CFR 171.8) of hazardous materials by aircraft or vessel. PHMSA requests comments regarding this prospective proposal. PHMSA is interested in comments including, but not limited to, comments related to the safety and economic implications of mandating the use of these regulations for international shipments, as well as implications to training of personnel.

The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building. Following the 35th session of the UNSCOE TDG, PHMSA will place a copy of the Sub-Committee's report and a summary of the results on PHMSA's Hazardous Materials Safety Homepage at *http://www.phmsa.dot.gov/hazmat/regs/international.*

Documents

Copies of documents for the UNSCOE TDG meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32009.html.* PHMSA's site at *http://www.phmsa.dot.gov/hazmat/regs/international* also provides additional information regarding the UNSCOE TDG and related matters such as summaries of decisions taken at previous sessions of the UNSCOE TDG.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–7042 Filed 3–30–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of a new system of records.

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 552(e)(4), requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Automated Safety Incident Surveillance and Tracking System–VA'' (99VA13).

DATES: Comments on the establishment of this new system of records must be received no later than April 30, 2009. If no public comment is received, the new system will become effective April 30, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed Online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), the Department of Veterans Affairs (VA) published a notice of a new system of records entitled ''Automated Safety Incident Surveillance and Tracking System–VA'' (99VA13) (ASISTS). 71 FR 62347 (Oct. 24, 2006). If no comments were received during the 30-day comment period, the system of records was to be effective on November 24, 2006. Due to comments that were received and indication that additional comments may be submitted, notice was provided that the system of records would not be effective until October 9, 2007. 71 FR 67957 (Nov. 24, 2006); 72 FR 17631 (Apr. 9, 2007). Due to comments received during that time, VA has revised the system notice and republishing the notice in its entirety.

I. Description of Proposed Systems of Records

The Automated Safety Incident Surveillance and Tracking System (ASISTS) is a bifurcated information system used to manage work-related injuries and illnesses by identifying, characterizing, and tracking occupational injuries and illnesses and the progress of injured or ill current and former employees, trainees, contractors, subcontractors, volunteers, and other individuals working with or performing services for VA. In limited circumstances, when such an individual chooses to file a workers' compensation claim with the Department of Labor (DoL), data required to file the claim is entered into the claim form that is then submitted to DoL. For the purpose of this system of records, current and former employees, trainees, contractors, subcontractors, volunteers, and other individuals working with or performing services for VA are characterized collectively as employees.

With respect to occupational safety, information regarding a workplace injury or illness, including the description of the incident, any correction action taken, results of any investigation, and recommendations for employees' safety and health, is entered into ASISTS by the supervisor of an injured or ill employee and the health and safety personnel of the facility. These records are used to identify specific incidents of work-related injuries and illnesses; track and evaluate services and medical care of injured or ill workers; and determine emerging causes, clusters of incidents, and outbreaks. In addition, VA uses the information to identify system-wide problems and opportunities for focused education; evaluate through statistical analysis the effectiveness health and safety systems; develop and manage the planning, distribution, and utilization of resources; and support further research in the area of occupational medicine. Some of this data is then compiled for reporting to the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DoL), in accordance with the 29 CFR part 1960. Further, the records may be used by institutional members of an accident review board or an incident review board, a multidisciplinary group of health and safety professionals and representatives from human resources, safety, occupational health, and unions/labor representatives and infection control to determine root causes of injuries and illnesses; and by VA hospitals and regional offices, VA Central Office, and the VA Office of Inspector General (OIG) for audits, reviews, and investigations of such events.

Where one of the injured or ill employees whose information is captured in the system chooses to file a workers' compensation claim under the Federal Employee Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, ASISTS provides a mechanism for electronic transmission of claims to the DoL Office of Workers' Compensation Programs (OWCP). For those employees who do

not file workers' compensation claims for their injuries or illnesses, no records pertaining to them exist in this portion of ASISTS. ASISTS is a bifurcated system that is protected by access control: authentication of users and authorization of those users' access and actions only in accordance with their permission levels. Information entered into claim forms is maintained and accessed separately from the rest of the system. Further, that data is entered by only the employee, his or her supervisor, and the workers' compensation personnel of the facility, and no other individual has access to those records.

Although this system facilitates the filing of workers' compensation claims, information used only to complete claims under the FECA, including the employee's own description of the incident, is not part of this system of records. ASISTS does not contain, in whole or in part, any exact duplicates or identical copies of FECA claim records. Rather, the official workers' compensation claim file is part of OWCP's government-wide system of records entitled Office of Workers' Compensation Programs, Federal Employees' Compensation Act Files (DOL/GOVT–1) and is not covered by this system. To the extent that any data in ASISTS is derived from FECA claim forms, that information will be treated as DOL/GOVT–1 records and disclosed only in accordance with the routine uses in that system.

II. Proposed Routine Use Disclosures of Data in the System

VA proposes to establish the following routine use disclosures of information that will be maintained in the system:

1. VA may disclose on its own initiative any information in this system, except the names and addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order.

VA must be able to disclose information within its possession on its own initiative that pertains to a violation of law to the appropriate authorities in order for them to investigate and enforce those laws. VA may disclose the names and home addresses of veterans and their dependents only to Federal entities with law enforcement responsibilities under 38 U.S.C. 5701(a) and (f). Accordingly, VA has so limited this routine use.

2. VA may disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made on behalf of and at the request of that individual.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before VA. When the Member of Congress writes VA, VA must be able to provide sufficient information to be responsive to the inquiry. This routine use is consistent with guidance from the Office of Management and Budget (OMB), issued on October 3, 1974, that directed all Federal agencies to insert this language in their systems of records. (*http://www.whitehouse.gov/omb/inforeg/lynn1975.pdf*).

3. VA may disclose information to the National Archives and Records Administration (NARA) in records disposition and management inspections conducted under authority of Title 44 of United States Code.

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation and for the physical maintenance of the Federal government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

4. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

When VA is involved in litigation or an adjudicative or administrative process, or occasionally when another party is involved in litigation or an adjudicative or administrative process, and VA policies or operations could be affected by the outcome of the litigation or process, VA must be able to disclose information to the court, the adjudicative or administrative body, or the parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by use of the information in the particular litigation or process is compatible with the purpose for which VA collected the information. This routine use is consistent with OMB guidance issued on May 24, 1985, directing all Federal agencies to promulgate such a routine use (*http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf*).

5. VA may disclose information for program review purposes and the seeking of accreditation and/or certification to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

6. VA may disclose information to officials of the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

VA must be able to disclose information to the MSPB to assist it in fulfilling its responsibilities regarding Federal employees, in accordance with Congressional intent reflected in that

agency's enabling statutes. Moreover, VA minimizes the release of individually identifiable information to another Federal agency and limits the disclosure to anonymous data where such information is sufficient for that agency to accomplish its statutory purpose.

7. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

VA must be able to disclose information to the EEOC to assist it in fulfilling its responsibilities to protect employee rights.

8. VA may disclose to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

VA must be able to disclose information to the FLRA to comply with the statutory mandate under which FLRA operates.

9. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement, or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency. VA must be able to provide information to contractors or subcontractors with which VA has a contract or agreement in order to perform the services of the contract or agreement. In these situations, safeguards are provided in the contract prohibiting the contractor or subcontractor from using or disclosing the information for any purpose other than that described in the contract.

10. VA may disclose information to labor unions operating at the facility level as members of institutional review boards, also known as accident review boards, to review root causes of injuries.

VA must be able to use and disclose the information to allow the facility and labor unions to review and recommend corrective measures for injury prevention.

11. VA may disclose information to the Department of Labor for the electronic filing of workers compensation claims, as provided by the Federal Employee Compensation Act, 5 U.S.C. 8121.

VA must be able to provide information regarding particular workplace injuries and illnesses to the Department of Labor for it to adjudicate claims for workers' compensation filed by injured or ill VA employees.

12. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use permits disclosure that is required by the Memorandum from the Office of Management and Budget (M–07–16), dated May 22, 2007, of all systems of records of all Federal agencies. Further, the disclosure allows VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In the routine use disclosures described above, except those governed by DOL/GOVT–1, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs or to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act, 5 U.S.C. 552a(r), and guidelines issued by OMB, 65 FR 77677, December 12, 2000.

Approved: February 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

99VA13

SECURITY CLASSIFICATION:

None.

SYSTEM NAME:

Automated Safety Incident Surveillance and Tracking System—VA.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs (VA) health care facility with back-up computer tape information being stored at off-site locations in most cases. The national database where ASISTS resides is located at the Austin Automation Center. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of the VA system of records. In addition, records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC; VA Data Processing Centers; VA OI Field Offices; Veterans Integrated Service Network Offices; and Employee Education Systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning current and former employees, trainees, contractors, subcontractors, volunteers, and other individuals working with or performing services for VA. For the purpose of this system of records, these individuals are characterized collectively as employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include:

1. Personal identifiers, including the injured or ill employee's name, date of birth, age, sex, and social security number;

2. Residential and professional contact data, including home and/or mailing address, home telephone number, emergency contact information, personnel status, and duty station;

3. Employment information, including personnel status, occupation, grade and step, date of hire, and station number;

4. Information about injuries and illnesses attributed to work, including the location of injury, cause, severity, type of injury, body parts affected, risk, and contributing factors;

5. Information from reviews and investigation of incidents conducted by the employee's supervisor and the safety personnel of that facility, including any corrective actions taken by the supervisor and the findings of the health and safety officer;

6. Abstract information, including environmental and epidemiological registries, studies of effectiveness health and safety systems, and further research in the area of occupational medicine.

7. Information required for reporting to the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DoL), including the name of the treating physician or other health care professional, hospitalization, medical treatment, medication, safety device; and

8. Information required for filing a workers' compensation claim with the DoL Office of Workers' Compensation Programs (OWCP) under the Federal Employee Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

ASISTS does not contain, in whole or in part, workers' compensation claim forms filed under the FECA, any duplicates or copies of such documents, or any information that is derived from claim records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 11, 31, 33, 43, 61, 63, and 83; 38 U.S.C. 501; 38 U.S.C. Chapter 74.

PURPOSE(S):

The records will be used to identify specific cases of work-related injuries and illnesses; track and evaluate medical care of and services provided to injured or ill workers, and determine emerging causes, clusters of incidents, and outbreaks. The records will also be used to identify system-wide problems and opportunities for focused education and intervention; evaluate the effectiveness of health and safety systems performance, especially after interventions, through statistical analysis; to develop and manage the planning, distribution, and utilization of resources; and support further research in the area of occupational medicine. The data may also be used for the review of root causes of injuries and for audits, reviews, and investigations of incidents involving workplace injuries and illnesses. Data may be accessed locally and at the VISN level through ASISTS directly or through presentation modes on the VISN Support Service Center (in anonymized form such as through a Proclarity Data Cube), Users include the following: Nationally data may be accessed through the rolled-up master file and data use agreements with the System of Records owner that address confidentiality requirements under the Privacy Act.

At the facility level: safety and industrial hygiene, engineering, human resources and workers compensation, occupational health, union, supervisory, and management staff.

At the VISN level: VISN safety and workers compensation staff and human resources staff.

At the national level: occupational health, safety, workers compensation, human resources, and engineering staff.

Where an injured or ill employee chooses to file a workers' compensation claim under the Federal Employee Compensation Act (FECA), 5 U.S.C. § 8101 *et seq.*, ASISTS provides a mechanism for electronic transmission of claims to DoL. Certain information in the system, including the employee's own description of the injury or illness, populates the claim form. The completed claim form, which is not a part of ASISTS, is then submitted to OWCP.

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

Although certain information in ASISTS populates workers' compensation claim forms, the official workers' compensation claim file is part of OWCP's government-wide system of records entitled Office of Workers' Compensation Programs, Federal Employees' Compensation Act Files (DOL/GOVT–1) and is not covered by this system. Any data in ASISTS that is used solely to populate FECA claim forms, such as the employee's own description of the incident, will be treated as DOL/GOVT–1 records and disclosed only in accordance with DOL's interpretation of the DOL/GOVT–1 routine uses.

1. VA may disclose on its own initiative any information in this system, except the names and addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, a Federal, state, local, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order.

2. VA may disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office on behalf of and at the request of that individual.

3. VA may disclose information to the National Archives and Records Administration (NARA) in records disposition and management inspections conducted under authority of Title 44 of United States Code.

4. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is

compatible with the purpose for which VA collected the records.

5. VA may disclose information for program review purposes and the seeking of accreditation and/or certification to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

6. VA may disclose information to officials of the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. §§ 1205 and 1206, or as may be authorized by law.

7. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

8. VA may disclose to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

9. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement, or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. VA may disclose information to labor unions operating at the facility level as members of institutional review boards, also known as accident review boards, to review root causes of injuries.

11. VA may disclose information to the Department of Labor for the electronic filing of workers compensation claims, as provided by 5 U.S.C. 8121.

12. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

13. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

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

STORAGE:

Records are maintained electronically on magnetic tape, disk, or laser optical media with copies of back-up computer files maintained at off-site locations in most cases.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA personnel on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas, which are locked, with limited access, or are otherwise protected. Records may be accessed by authorized VA employees, and access is controlled at two levels; the systems recognize authorized users by series of individually unique passwords/codes as a part of each data message, and access is limited to only those who need the information in the performance of their official duties. Information downloaded from ASISTS and maintained on personal computers is afforded similar storage and access protections as data maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to information that populates workers' compensation claim forms submitted to DoL is accessible to only the employee filing the claim, his or her supervisor, and the workers' compensation personnel of the facility.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

At the current time, VA does not have records disposition authority for these records that has been approved by the Archivist of the United States. The System Manager has initiated action to seek and obtain such disposition authority in accordance with VA Handbook 6300.1, Records Management Procedures. The records will not be destroyed until VA obtains a NARA-approved records disposition authority. Once VA has obtained NARA-approved records disposition authority, the agency will amend this notice to reflect that authority, and any destruction of electronic records will occur when no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system: Director at the facility where the employee was associated.

NOTIFICATION PROCEDURE:

Individuals seeking information on the existence and content of a record pertaining to them should contact the VA facility location at which they are or

were employed, or performed work. Inquiries should include the person's full name, social security number, dates of employment or work, and return address.

RECORD ACCESS PROCEDURE:

(See Notification Procedure above.)

CONTESTING RECORD PROCEDURES:

(See Notification Procedure above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees, trainees, contractors, subcontractors, volunteers, and other affected individuals; supervisors; health and safety professionals at facilities; clinical personnel; workers' compensation personnel; and human resources staff.

[FR Doc. E9–7160 Filed 3–30–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice to amend an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), the Department of Veterans Affairs (VA) is amending the system of records entitled ''Purchase Credit Card Program-VA'' (131VA047) as described in the **Federal Register** at 70 FR 7320 (February 11, 2005). VA is amending the system of records by updating our routine uses relating to records maintained in the system. VA is republishing the system of records notice in its entirety.

DATES: Written comments mailed to the Department must be postmarked no later than April 30, 2009, and written comments hand-delivered or submitted electronically to the Department must be received no later than 5 p.m. Eastern Time on April 30, 2009. If no public comment is received during the 30-day public comment period, or unless otherwise published in the **Federal Register** by VA, the new system of records statement is effective on April 30, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed Online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone: (202) 461–6487 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, VA has conducted a review of its Privacy Act systems of records notices and has determined that it needs to amend and establish the following routine use disclosures for the information maintained in the system of records entitled ''Purchase Credit Card Program-VA'' (131VA047):

Routine use three (3) is amended to add language to clarify when VA will disclose information to a court, adjudicative or administrative bodies, or the parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation or process is compatible with a purpose for which VA collects the information.

Routine use five (5) is amended to add language to clarify when VA will disclose the names and addresses of veterans and their dependents in order to comply with the requirements of agencies, such as Federal, State, local, tribal and foreign agencies, charged with enforcing the law and investigations of violations or possible violations of law.

Routine use seven (7) is deleted. A further reading of this routine use indicates that it may be more restrictive than the disclosure provided to consumer reporting agencies, as set forth in 38 U.S.C. 552a(b)(12). In addition, any delinquent debts that remain outstanding are referred for collection action to the Department of the Treasury or the Department of Justice. Disclosure of information for such referrals is already covered by routine uses three (3) and nine (9). The remainder of the routine uses will be renumbered accordingly.

A new routine use ten (10) is added. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services.

Finally, VA is adding new routines uses eleven (11), twelve (12), and thirteen (13). These three new routine uses are added to enable disclosure of information to the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), and the Equal Employment Opportunity Commission (EEOC) in order for each to address matters within their jurisdiction.

The Privacy Act of 1974 permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information either in connection with a matter related to one of VA's programs, or will use the information to provide a benefit to VA, or will disclose as required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65FR77677).

Approved: March 3, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

131VA047

SYSTEM NAME:

Purchase Credit Card Program-VA

SYSTEM LOCATION:

This system of records is located in the finance/fiscal office of the local installations of the Department, the Financial Services Center, Austin, TX, and VA Central Office, Washington, DC. Records necessary for a contractor to perform under a contract are located at the contractor's facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current VA employees who have their own Government assigned charge card, or who have had a charge card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, work and home addresses, social security number,

date of birth, employment information, work and home telephone numbers, information needed for identification verification, charge card applications, charge card statements, terms and conditions for use of the charge card, and monthly report from contractor(s) showing charges to individual account numbers, balances, and other types of account analysis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Acquisition Regulation (FAR), Part 13, 48 CFR part 13, and Public Law 93–579, section 7(b).

PURPOSE(S):

To establish and maintain a system for operating, controlling, and managing the purchase credit card program involving commercial purchases by authorized VA employees.

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

System information may be accessed and used by authorized VA employees or contractors to conduct duties associated with the management and operation of the purchase credit card program.

Information from this system also may be disclosed as a routine use for the following purposes:

(1) The record of an individual who is covered by this system may be disclosed to a member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

(2) Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

(3) VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

(4) Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

(5) VA may disclose on its own initiative any information in this system, except the names and addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependants to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(6) Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

(7) Any information in this system of records concerning a delinquent debt may be disclosed to the Secretary of the Treasury, or to any designated Government disbursing official, for the purpose of conducting administrative offset of any eligible Federal payments, under the authority set forth in 31 U.S.C. 3716. Tax refund and Federal salary payments may be included in those Federal payments eligible for administrative offset.

(8) Any information in this system of records concerning a delinquent debt may be disclosed to the Secretary of the Treasury for appropriate collection or termination action, including the transfer of the indebtedness for collection or termination, in accordance with 31 U.S.C. 3711(g)(4), to a debt collection center designated by the Secretary of the Treasury, to a private collection agency, or to the Department of Justice. The Secretary of the Treasury, through the Department of the Treasury, a designated debt collection center, a private collection agency, or the Department of Justice, may take appropriate action on a debt in accordance with the existing laws under which the debt arose.

(9) Records from this system of records may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(10) VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (a) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (b) VA has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputation of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (c) the disclosure to such agencies, entities, or persons whom VA determines to be reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

(11) VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

(12) VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised.

Information may also be disclosed to the FLRA in order for it to address matters properly before the Federal Services Impasses Panel, to investigate representation petitions, and to conduct or supervise representation elections.

(13) VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security number), the amount, status and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. Title 31 U.S.C. 3711(e) governs the release of names and addresses of any person to consumer reporting agencies under certain circumstances.

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

STORAGE:

Paper documents and electronic storage media.

RETRIEVABILITY:

These records may be retrieved using various combinations of name or identification number (credit card number) of the individual on whom the records are maintained.

SAFEGUARDS:

This list of safeguards furnished in this System of Record is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information.

The Financial Services Center will maintain the data in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST).

Access to these records is restricted to authorized VA employees, contractors, or subcontractors who have been cleared to work by the VA Office of Security and Law Enforcement, on a ''need to know'' basis. They are required to take annual VA data privacy and security training.

Offices where these records are maintained are locked after working hours and are protected from outside access by the Federal Protective Service, other security officers, and alarm systems. Access to computerized records is restricted to authorized VA employees, contractors, or subcontractors by means of unique user identification and passwords.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 6, Item 1a(2), retain in inactive storage 1 year after the close of the fiscal year, then transfer to a Federal Archives and Records Center. Destroy 6 years and 3 months after period covered by account.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Finance (047), VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURES:

Individuals seeking information concerning the existence of a record pertaining to them must submit a written request to the VA station where the records are maintained. Such request must contain a reasonable description of the records requested. In addition, identification of the individual requesting the information will be required in the written request and will consist of the requester's name, signature, and address, at a minimum.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information received from individuals and the private credit card contractor.

[FR Doc. E9–7161 Filed 3–30–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice to delete system of records.

SUMMARY: The Department of Veterans Affairs (VA) is deleting a system of records entitled ''Veterans and Dependents Inactive Award Account Records—VA'' (39VA047). The system contained information on payments made to or on behalf of an individual veteran and/or dependents. This system of records is being deleted since it is no longer being used by the Department because records pertaining to this system have been incorporated into ''Compensation, Pension, Education, and Rehabilitation Records—VA'' (58VA21/22).

A ''Report of Intention to Publish a Federal Notice of Deletion of a System of Records'' and a copy of the deletion of system notice have been provided to the appropriate Congressional committees and to the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

DATES: *Effective Date:* March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6487 (this is not a toll-free number).

Approved: March 3, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–7162 Filed 3–30–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
March 31, 2009

Part II

General Services Administration

Department of Defense

National Aeronautics and Space Administration

48 CFR Parts 1, 3, 4, et al.

Federal Acquisition Regulations; Federal Acquisition Circular 2005–32; FAR Case 2008–026; FAR Cases 2009–008, –009, –010, –011, and –012, American Recovery and Reinvestment Act of 2009 (the Recovery Act); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2009–0001, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–32; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–32. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://acquisition.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–32 and specific FAR case number(s). Interested parties may also visit our Web site at *http://acquisition.gov/far*. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–32

Item	Subject	FAR case	Analyst
I	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim).	2009–008	Murphy.
II	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim).	2009–012	Parnell.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim).	2009–010	Gary.
IV	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (Interim).	2009–009	Woodson.
V	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access (Interim)	2009–011	Chambers.
VI	GAO Access to Contractor Employees (Interim)	2008–026	Neurauter.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–32 amends the FAR as specified below:

Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009–008)

This interim rule implements the Buy American provision, section 1605, of the American Recovery and Reinvestment Act of 2009. It prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. However, section 1605 requires that the Buy American requirement be applied in a manner consistent with U.S. obligations under international agreements. Moreover, because Congress intended that least developed countries be excepted from section 1605, least developed countries can continue to be treated as designated countries. Section 1605 also provides for waivers under certain limited circumstances.

Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009–012)

Subpart 3.9 of the Federal Acquisition Regulation (FAR) is revised to add section 3.907. Section 3.907 provides procedures for whistleblower protection, when using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Section 3.907 provides that non-Federal employers are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials. This section further provides definitions relevant to the statute; establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority.

A new clause 52.203–15 is added to require contractors to post rights and remedies for whistleblower protections under Section 1553 of the American Recovery and Reinvestment Act.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim) (FAR Case 2009–010)

This interim rule implements the Office of Management and Budget's Guidance, M–09–10, ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,'' dated February 18, 2009, section 6.2. Federal Acquisition Regulation (FAR) Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), in accordance with the instructions at *https://www.fpds.gov*. Subpart 5.7 is added to direct the contracting officer to use the Governmentwide Point of Entry (*https://www.fedbizopps.gov*) to (1) Identify the action as funded by the Recovery Act; (2) post pre-award notices for orders exceeding $25,000 for ''informational purposes only;'' (3) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and (4) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive,

and include the rationale for using other than a fixed-price and/or competitive approach. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

Item IV—American Recovery and Reinvestment Act of 2009 (The Recovery Act)—Reporting Requirements (Interim) (FAR Case 2009–009)

This interim rule implements section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds. The rule adds a new subpart 4.15, and a new clause, 52.204–11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This clause applies to Commercial item contracts and Commercially-Available-Off-The-Shelf (COTS) item contracts as well as actions under the Simplified Acquisition Threshold.

Contracting officers who wish to use Recovery Act funds on existing contracts should modify those contracts to add the clause.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

Item V—American Recovery and Reinvestment Act of 2009 (The Recovery Act)—GAO/IG Access (Interim) (FAR Case 2009–011)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009. Collectively, these Sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to 52.212–5, ''Contract Terms and Conditions Required to Implement Statutes orExecutive Orders—Commercial Items'', 52–214–26, ''Audit and Records—Sealed Bidding,'' and 52.215–2, ''Audit and Records—Negotiation''. For the Comptroller General these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency inspector generals receive the same authorities, with the exception of interviewing subcontractor employees.

Item VI—GAO Access to Contractor Employees (Interim) (FAR Case 2008–026)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 12 and 52. Clauses 52.215–2, Audit and Records—Negotiation and 52.214–26, Audit and Records—Sealed Bidding are being modified to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule will not apply to the acquisition of commercial items; therefore, FAR 12.503 will be amended to add the exemption of this rule. This change implements Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417).

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–32 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–32 is effective March 31, 2009.

Dated: March 24, 2009.

Shay D. Assad,

Director, Defense Procurement And Acquisition Policy.

Dated: March 24, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive & Acting Deputy Chief Acquisition Officer Office of the Chief Acquisition Officer U.S. General Services Administration.

Dated: March 24, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–7027 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 25, and 52

[FAC 2005–32; FAR Case 2009–008; Item I; Docket 2009–0008, Sequence 1]

RIN 9000–AL22

Federal Acquisition Regulation; FAR Case 2009–008, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) with respect to the Buy American provision, section 1605 in Division A. This rule does not cover procurements funded with Federal financial assistance such as Federal grants. Additional guidance will be provided by the Office of Management and Budget with respect to the application of section 1605 to procurements funded with Federal financial assistance.

DATES: *Effective Date*: March 31, 2009.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the FAR clauses for future orders, if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of Recovery Act funds.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–008, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–008'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–008. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2009–008'' on your attached document.

• *Fax*: 202–501–4067.

• *Mail*: General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, *Attn*: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2009–008, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. Please cite FAC 2005–32, FAR case 2009–008. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the Recovery Act with respect to the unique Buy American provision, section 1605 of the Recovery Act, by adding a new Subpart 25.6, entitled ''American Recovery and Reinvestment Act—Buy American Act—Construction Materials,'' and adding new provisions and clauses at Part 52, with conforming changes to Subparts 1.1, 5.2, 25.0, 25.2, and 25.11.

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009, which includes a number of provisions to be implemented in Federal Government contracts. Among these provisions is section 1605, entitled ''Buy American.'' It prohibits the use of funds appropriated or otherwise made available by the Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

1. Iron, steel, or manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

2. Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the contract by more than 25 percent; or

3. Applying the domestic preference would be inconsistent with the public interest.

The implementation of section 1605 is expected to stimulate the economy by increasing and maintaining jobs in the United States in the steel, iron, and manufactured construction materials industries and providing new opportunities to construction firms to win contracts for construction and public works projects.

B. Discussion

Because of the need to appropriately segregate the unique Buy-American provisions of the Recovery Act from the requirements of the Buy American Act and the Trade Agreements Act, the Councils have decided to include them in a separate subpart of FAR Part 25. Subpart 25.6, currently reserved, will be entitled ''American Recovery and Reinvestment Act—Buy American Act—Construction Materials.'' A reference to Subpart 25.6 was added to the ''Scope'' section of Subpart 25.2, Buy American Act—Construction Materials.

Subpart 25.6 includes a policy statement at 25.602 that repeats the prohibition against using funds appropriated by the Recovery Act for U.S. construction projects to purchase iron, steel, or other manufactured goods that were not produced in the U.S. It also notes that unmanufactured construction materials remain covered by the provisions of the Buy American Act. The exceptions to this policy (see Background section above) are similar to those for the Buy American Act, but the Recovery Act requires publication in the **Federal Register** of the detailed written justification that the agency used to make an exception to the statute. The Councils welcome comments on additional steps that may enhance transparency consistent with the goals of the Recovery Act.

In order to enable implementation of the policy, the interim rule includes definitions of ''steel,'' ''manufactured construction material,'' ''unmanufactured construction material,'' ''domestic construction material,'' and ''foreign construction material.'' These definitions are drawn from existing Federal domestic-sourcing laws and the longstanding interpretations that have evolved from them. It also includes a cross reference to the definition of ''public work'' at FAR 22.401, which defines ''public building or public work'' to mean ''uilding or work, the construction, prosecution, completion, or repair of which * * * is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.''

Because section 1605 does not specify a requirement that significantly all the components of construction material must also be domestic, as does the Buy American Act, the definition of domestic construction material under this interim rule does not include a requirement relating to the origin of the components of domestic manufactured construction material. Unmanufactured construction material is not specifically addressed in section 1605 of the Recovery Act. However, the Recovery Act's purpose of creating jobs and stimulating domestic demand is well served by applying the Buy American Act to unmanufactured construction material.

The rules for preaward determination of the inapplicability of section 1605 and the Buy American Act are at FAR 25.604.

Section 25.605 addresses the evaluation of offers containing foreign construction material based on an approved exception for unreasonable cost. If the contracting officer determines that an exception based on unreasonable cost of domestic construction material applies, the contracting officer must evaluate the offer by adding to the offered price—

(1) 25 percent of the offered price, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(2) 6 percent of the value of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

The text of Subpart 25.6 makes it clear that a determination to waive the applicability of section 1605 should be made prior to award. However, section 25.606 recognizes certain limited circumstances in which a postaward waiver could be made, but only with adequate consideration from the contractor. A contractor's noncompliance with section 1605 is addressed at FAR 25.607.

Prescriptions for the use of all of the solicitation provisions and contract clauses applicable to FAR Part 25 are

included in a single subpart, 25.11. The Councils have modified section 25.1102, entitled ''Acquisition of Construction,'' to add a new paragraph that substitutes four new provisions and clauses (with appropriate alternates), to be used when contracting with funds appropriated by the Recovery Act, for the four clauses otherwise used in construction contracts to implement the Buy American Act and U.S. obligations under applicable trade agreements. Specifically, when using Recovery Act appropriated funds, contracting officers will use—

- 52.225–21, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials, instead of 52.225–9, Buy American Act—Construction Materials;
- 52.225–22, Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials, instead of 52.225–10, Notice of Buy American Act Requirement—Construction Materials;
- 52.225–23, Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials Under Trade Agreements, instead of 52.225–11, Buy American Act—Construction Materials under Trade Agreements; and
- 52.225–24, Notice of Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials under Trade Agreements, instead of 52.225–12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.

The clauses are unique in that, for Recovery Act-funded construction projects, the 25 percent price adjustment factor for non-U.S. iron, steel, and other foreign manufactured construction material excepted from the section 1605 requirement on the basis of unreasonable cost is applied to the entire price of the project, not only to the cost of the foreign materials. The 6 percent adjustment for the Buy American Act is retained and applied to the cost of foreign unmanufactured goods excepted from the requirements of the Buy American Act on the basis of unreasonable cost. Given the applicability of the Recovery Act to iron, steel, and manufactured goods, the definition of ''component'' is unnecessary in these clauses, because the definition of domestic construction material no longer includes a requirement relating to the origin of components.

However, if trade agreements apply to the acquisition, the use of the provision and clause 52.225–23 and 52.225–24, respectively, ensures that eligible construction material from designated countries is treated in accordance with Subpart 25.4. No evaluation factor is applied to offers on the basis of using eligible construction material. This provision and clause retain the same basic processes that are used in the standard construction clauses, except for the specific changes that have been addressed relating to new requirements of section 1605 of the Recovery Act.

In the Recovery Act conference report, Congress expressed its intent that least developed countries be excepted from section 1605 and that they retain their status as designated countries. However, with respect to Caribbean Basin countries, Congress did not express a similar intent. Therefore, Caribbean Basin countries are not included as designated countries with respect to the Recovery Act.

C. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them.

Therefore, given section 1605 of the Recovery Act, which establishes Buy American requirements for projects funded by the Recovery Act, the FAR Council has determined that this rule should apply to contracts or subcontracts at or below the simplified acquisition threshold, as defined at 2.101.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, for the following reasons. This interim rule will only impact an offeror that wants to use non-U.S. iron, steel, and other manufactured goods in a construction project in the United States. The Councils believe that there are adequate domestic sources for these materials, and the Office of Management and Budget (OMB) guidance M–09–10 issued February 18, 2009, entitled ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,'' provides a strong preference for using small businesses for Recovery Act projects wherever possible. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 5, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–32, FAR case 2009–008), in all correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0141. However, the information collection requirements imposed by the provisions 52.225–22 and 52.225–24 are currently covered by the approved information collection requirements for provisions 52.225–9 and 52.225–11 (OMB Control number 9000–0141, entitled Buy American Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11). While the Councils believe no changes will be needed to the collection due to the interim regulation, comments are welcome during the 60 day comment period with regard to the data elements, the burden, or any other part of the collection.

F. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the American Recovery and Reinvestment Act of 2009 became effective upon enactment, and contracts using funds appropriated by the Recovery Act will soon be ready to award. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this

interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 5, 25, and 52

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 5, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory paragraph, by adding, in numerical sequence, FAR segments 52.225–21 and 52.225–23, and their corresponding OMB Control Number 9000–0141.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.207 by revising paragraph (c)(13)(iii) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(13) * * *

(iii) If the solicitation will include the FAR clause at 52.225–11, Buy American Act—Construction Materials under Trade Agreements, 52.225–23, Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.''

* * * * *

PART 25—FOREIGN ACQUISITION

■ 4. Amend section 25.001 by revising paragraph (c)(1) and adding a new paragraph (c)(4) to read as follows:

25.001 General.

* * * * *

(c) * * *

(1) The Buy American Act uses a two-part test to define a ''domestic end product'' or ''domestic construction material'' (manufactured in the United States and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.

* * * * *

(4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), the definition of ''domestic manufactured construction material'' requires manufacture in the United States but does not include a requirement with regard to the origin of the components.

25.002 [Amended]

■ 5. Amend the table in section 25.002, by removing from the sixth row ''[Reserved]'' and adding ''American Recovery and Reinvestment Act—Buy American Act—Construction Materials'' in its place, and in the fifth column adding ''X''.

■ 6. Add Subpart 25.6 to read as follows:

Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials

Sec.

25.600 Scope of subpart.
25.601 Definitions.
25.602 Policy.
25.603 Exceptions.
25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.
25.605 Evaluating offers of foreign construction material.
25.606 Postaward determinations.
25.607 Noncompliance.

Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials

25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) and the Buy American Act. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

25.601 Definitions.

As used in this subpart—

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

Foreign construction material means a construction material other than a domestic construction material.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Recovery Act designated country means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

25.602 Policy.

Except as provided in 25.603—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (as defined at 22.401) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and other manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured construction material.

(ii) There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

(b) Use only domestic unmanufactured construction material, as required by the Buy American Act.

25.603 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign construction materials without regard to the restrictions of section 1605 of the Recovery Act or the Buy American Act:

(1) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials.

(2) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.605.

(3) *Inconsistent with public interest.* The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(b) *Determinations.* When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used—

(1) The contracting officer shall list the excepted materials in the contract; and

(2) The head of the agency shall publish a notice in the **Federal Register** within two weeks after the determination is made, unless the construction material has already been determined in the FAR to be domestically nonavailable (see list at 25.104). The notice shall include—

(i) The title ''Buy American Exception under the American Recovery and Reinvestment Act of 2009'';

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements.* (1) For construction contracts with an estimated acquisition value of $7,443,000 or more, *also see* Subpart 25.4. Offers of products determined to be eligible products per Subpart 25.4 shall receive equal consideration with domestic offers per Subpart 25.4.

(2) For purposes of the Recovery Act, designated countries do not include the Caribbean Basin Countries.

25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225–22 or 52.225–24, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225–21 or 52.225–23, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(c) Determination based on unreasonable cost of domestic construction material.

(1) *Iron, steel, and other manufactured construction material.* The contracting officer must compare the offered price of the contract using foreign manufactured construction material to the estimated price if all domestic manufactured construction material were used. If use of domestic manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

(2) *Unmanufactured construction material.* The contracting officer must compare the cost of each foreign unmanufactured construction material to the cost of domestic unmanufactured construction material. If the cost of the domestic unmanufactured construction material exceeds the cost of the foreign unmanufactured construction material by more than 6 percent, then the contracting officer shall determine that the cost of the unmanufactured construction material is unreasonable.

25.605 Evaluating offers of foreign construction material.

(a) If the contracting officer has determined that an exception applies because the cost of certain domestic construction material is unreasonable, in accordance with section 25.604, then the contracting officer shall apply evaluation factors to the offer incorporating the use of such foreign construction material as follows:

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign iron, steel, or other manufactured goods are incorporated in the offer as construction material based on an exception for unreasonable cost requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost requested by the offeror.

(3) Total evaluated price = offered price + (.25 × offered price, if (a)(1) applies) + (.06 × cost of foreign unmanufactured construction material, if (a)(2) applies).

(b) If two or more offers are equal in price, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(3) of 52.225–21, or paragraph (b)(3) of 52.225–23), the contracting officer must add the excepted materials to the list in the contract clause.

25.606 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225–21 or 52.225–23 and/or other readily available information.

(c) If a determination, under 25.603(a), is made after contract award that an exception to section 1605 of the Recovery Act or to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable cost of a domestic construction material, adequate

consideration is at least the differential established in 25.605(a).

25.607 Noncompliance.

The contracting officer must—

(a) Review allegations of violations of section 1605 of the Recovery Act or Buy American Act;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act in accordance with 25.606.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of section 1605 of the Recovery Act or the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspension or debarment official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

■ 7. Amend section 25.1102 by adding an introductory paragraph; revising paragraph (c)(1); and adding paragraph (e) to read as follows:

25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

* * * * *

(c) * * *

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country construction material.

* * * * *

(e)(1) When using funds appropriated under the Recovery Act for construction, use provisions and clauses 52.225–21, 52.225–22, 52.225–23, or 52.225–24 (with appropriate Alternates) in lieu of the provisions and clauses 52.225–9, 52.225–10, 52.225–11, or 52.225–12 (with appropriate Alternates), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) When using clause 52.225–23, list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause.* List all foreign construction material excepted from the requirements of the Buy American Act, other than Recovery Act designated country construction material.

(ii) Alternate I—List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a Recovery Act designated country other than Bahrain, Mexico, or Oman.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.225–21 through 52.225–24 to read as follows:

52.225–21 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.

As prescribed in 25.1102(e), insert the following clause:

Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act—Construction Materials MAR 2009)

(a) *Definitions.* As used in this clause—

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

Foreign construction material means a construction material other than a domestic construction material.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference.* (1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a–10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none'']

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of reponse; if oral, attach summary.] [Include other applicable supportinginformation.]

**Include all delivery costs to the construction site.]*

(End of clause)

52.225–22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.

As prescribed in 25.1102(e), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAR 2009)

(a) *Definitions.* ''Construction material,'' ''domestic construction material,'' ''foreign construction material,'' ''manufactured construction material,'' ''steel,'' and ''unmanufactured construction material,'' as used in this provision, are defined in the clause of this solicitation entitled ''Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials'' (Federal Acquisition Regulation (FAR) clause 52.225–21).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer

requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225–21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225–21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225–21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009]). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21.

52.225–23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements.

As prescribed in 25.1102(e), insert the following clause:

Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements MAR 2009)

(a) *Definitions.* As used in this clause—

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Domestic construction material means— (1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

Foreign construction material means a construction material other than a domestic construction material.

Free trade agreement (FTA) country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Recovery Act designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

Recovery Act designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

United States means the 50 States, the District of Columbia, and outlying areas.

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a–10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate ''none''.]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

(End of clause)

Alternate I (MAR 2009). As prescribed in 25.1102(e), add the following definition of ''Bahrainian, Mexican, or Omani construction material'' to

paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material'' means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225–24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements.

As prescribed in 25.1102(e), insert the following provision:

Notice of Required Use Of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements (*MAR 2009*)

(a) *Definitions.* ''Construction material,'' ''domestic construction material,'' ''foreign construction material,'' ''manufactured construction material,'' ''Recovery Act designated country construction material,'' ''steel,'' and ''unmanufactured construction material,'' as used in this provision, are defined in the clause of this solicitation entitled ''Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements'' (Federal Acquisition Regulation (FAR) clause 52.225–23).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–23 in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–23.

Alternate II (MAR 2009). As prescribed in 25.1102(e), add the definition of ''Bahrainian, Mexican, or Omani construction material'' to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate

offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

[FR Doc. E9–7031 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 2005–32; FAR Case 2009–012; Item II; Docket 2009–0009, Sequence 1]

RIN 9000–AL19

Federal Acquisition Regulation; FAR Case 2009–012, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. This rule prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information.

DATES: *Effective Date:* March 31, 2009.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the FAR clause for future orders, if the Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of the Recovery Act funds.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–012, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–012'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–012. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2009–012'' on your attached document.

- *Fax:* 202–501–4067.
- Mail: General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2009–012, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–32, FAR case 2009–012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements section 1553 of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to the protection of whistleblowers, by adding a new section 3.907, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 and a new clause at FAR 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009, and its prescription in FAR 3.907–7.

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009, including a number of provisions to be implemented in Federal Government contracts. Among these provisions is Section 1553 of the Recovery Act, ''Protecting State and Local Government and Contractor Whistleblowers''. This requirement promotes transparency in Federal contracting.

B. Discussion

FAR 3.907 provides that non-Federal employers receiving funds under the Recovery Act are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials or a person with supervisory authority over the employee. This section further provides definitions relevant to the statute; establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority. FAR 3.907–7 prescribes a new clause at 52.203–15.

C. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. The FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council (FAR Council) makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them.

Therefore, given section 1553 of the Recovery Act, which extends whistleblower protections to employees of contractors that receive contracts funded under the Recovery Act, and the initial implementing guidance for the Recovery Act issued on February 18,

2009 by the Director of the Office of Management and Budget committing to an unprecedented level of transparency and accountability for taxpayer dollars, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to acquisitions at or below the simplified acquisition threshold, as defined at FAR 2.101.

D. Applicability to Commercial Item Contracts

Section 8003 of Public Law 103–355, the FASA (41 U.S.C. 430), governs the applicability of laws to commercial items, and is intended to limit the applicability of laws to commercial items. The FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for commercial items. The same applies for subcontracts for commercial items.

Therefore, given section 1553 of the Recovery Act, which prohibits non-Federal employers working on contracts funded with the Recovery Act funds from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information the employee reasonably believes is evidence of information listed in section 1553(a), the FAR Council has determined that the rule should apply to contracts for commercial items, as defined at FAR 2.101, at both the prime and subcontract levels.

E. Applicability to Commercially Available Off-the-Shelf (COTS) Item Contracts

Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to the procurement of COTS items, and is intended to limit the applicability of laws to them. Clinger-Cohen provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply.

Therefore, given section 1553 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which prohibits non-Federal employers working on contracts funded with the Recovery Act funds from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information the employee reasonably believes is evidence of information listed in section 1553(a), the Administrator, Office of the Federal Procurement Policy, has determined that the rule should apply to COTS item contracts, as defined at FAR 2.101.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

F. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule applies similar, but not identical, whistleblower protections to contractor and subcontractor employees as currently covered in FAR Subpart 3.9. Likewise, this rule only applies to contracts funded in whole or in part with the Recovery Act funds. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 3 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (FAC 2005–32, FAR Case 2009–012) in all correspondence.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

H. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the American Recovery and Reinvestment Act of 2009 became effective on enactment, and contracts using funds appropriated by the Recovery Act will soon be ready to award. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director,Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 3 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Revise section 3.900 to read as follows:

3.900 Scope of subpart.

(a) Sections 3.901 through 3.906 of this subpart implement 10 U.S.C. 2409 and 41 U.S.C. 265, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(b) Section 3.907 of this subpart implements Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and applies to all contracts funded in whole or in part by that Act.

3.902 [Removed and Reserved]

■ 3. Remove and reserve section 3.902.

■ 4. Add sections 3.907 through 3.907–7 to read as follows:

3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

3.907–1 Definitions.

As used in this section—

Board means the Recovery Accountability and Transparency Board established by Section 1521 of the Recovery Act.

Covered funds means funds appropriated by or otherwise made available by the Recovery Act.

Covered information means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation

related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to covered funds.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978. In the Department of Defense that is the DoD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

Non-Federal employer, as used in this section, means any employer that receives Recovery Act funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Acquisition Regulation.

3.907–2 Policy.

Non-Federal employers are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities or their representatives:

(1) The Board.

(2) An Inspector General.

(3) The Comptroller General.

(4) A member of Congress.

(5) A State or Federal regulatory or law enforcement agency.

(6) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.

(7) A court or grand jury.

(8) The head of a Federal agency.

3.907–3 Procedures for filing complaints.

(a) An employee who believes that he or she has been subjected to reprisal prohibited by the Recovery Act, Section 1553 as set forth in 3.907–2, may submit a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The covered information giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act; and

(5) The specific nature and date of the reprisal.

(c) A contracting officer who receives a complaint of reprisal of the type described in 3.907–2 shall forward it to the Office of the Inspector General, agency legal counsel or to the appropriate official in accordance with agency procedures.

3.907–4 Procedures for investigating complaints.

Investigation of complaints will be in accordance with section 1553 of the Recovery Act.

3.907–5 Access to investigative file of Inspector General.

(a) The employee alleging reprisal under this section shall have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. 552a. The investigation of the Inspector General shall be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(b) In the event the employee alleging reprisal brings a civil action under section 1553(c)(3) of the Recovery Act, the employee alleging the reprisal and the non-Federal employer shall have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(c) The Inspector General may exclude from disclosures made under 3.907–5(a) or (b)—

(1) Information protected from disclosure by a provision of law; and

(2) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the Inspector General determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(d) An Inspector General investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with 5 U.S.C. 552a or as required by any other applicable Federal law.

3.907–6 Remedies and enforcement authority.

(a) *Burden of Proof.* (1) Disclosure as contributing factor in reprisal.

(i) An employee alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the employee demonstrates that a disclosure described in section 3.907–2 was a contributing factor in the reprisal.

(ii) A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including—

(A) Evidence that the official undertaking the reprisal knew of the disclosure; or

(B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal.* The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under section 3.907–6(a)(1) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an Inspector General report in accordance with section 1553 of the Recovery Act, the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection 3.907–2 and shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

(1) Order the employer to take affirmative action to abate the reprisal.

(2) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c)(1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of United States, which shall have jurisdiction over such an action without regard to the amount in controversy if

(i) The head of an agency—

(A) Issues an order denying relief in whole or in part under paragraph (a) of this section;

(B) Has not issued an order within 210 days after the submission of a complaint in accordance with section 1553 of the Recovery Act, or in the case of an extension of time in accordance with section 1553 of the Recovery Act, within 30 days after the expiration of the extension of time; or

(C) Decides in accordance with section 1553 of the Recovery Act not to investigate or to discontinue an investigation; and

(ii) There is no showing that such delay or decision is due to the bad faith of the complainant.

(2) Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order issued under this section, the head of the agency shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under paragraph (b) of this subsection may obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency.

3.907–7 Contract Clause.

Use the clause at 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 in all solicitations and contracts funded in whole or in part with Recovery Act funds.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 52.203–15 to read as follows:

52.203–15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009

As prescribed in 3.907–7, use the following clause:

Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

(End of clause)

■ 6. Amend section 52.212–4 by revising the date of the clause and paragraph (r) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (MAR 2009)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

* * * * *

(End of clause)

■ 7. Amend section 52.212–5 by—

a. Revising the date of the clause;

b. Redesignating paragraphs (b)(3) thru (b)(41) as paragraphs (b)(4) thru (b)(42), respectively, and adding a new paragraph (b)(3); and

c. Redesignating paragraphs (e)(1)(iii) thru (e)(1)(xiii) as paragraphs (e)(1)(iv) thru (e)(1)(xiv), respectively, and adding a new paragraph (e)(1)(iii). The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Mar 2009)

* * * * *

(b) * * *

(3) 52.203–15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111–5).

* * * * *

(e)(1) * * *

(iii) 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111–5). Applies to subcontracts funded under the Act.

* * * * *

(End of clause)

■ 8. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Mar 2009)

(a) * * *

(2) * * *

(vi) 52.244–6, Subcontracts for Commercial Items. (MAR 2009)

* * * * *

■ 9. Amend section 52.244–6 by revising the date of the clause; redesignating paragraphs (c)(1)(ii) thru (c)(1)(viii) as paragraphs (c)(1)(iii) thru (c)(1)(ix), respectively, and adding a new paragraph (c)(1)(ii).

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Mar 2009)

* * * * *

(c)(1) * * *

(ii) 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111–5). Applies to subcontracts funded under the Act.

* * * * *

(End of clause)

[FR Doc. E9–7020 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 8, 13, and 16

[FAC 2005–32; FAR Case 2009–010; Item III; Docket 2009–0010, Sequence 1]

RIN 9000–AL24

Federal Acquisition Regulation; FAR Case 2009–010, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget (OMB) Guidance M–09–10, dated February 18, 2009, entitled, ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009'' (the Recovery Act), with respect to publicizing contract actions.

DATES: *Effective Date*: March 31, 2009

Applicability Date: This rule applies on or after the effective date of this rule to: (1) Solicitations issued, (2) contracts awarded, and (3) orders issued under existing task and delivery order contracts as defined in the rule.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–010, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–010'' under the heading ''Comment or Submission.'' Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–010. Follow the instructions provided to complete the ''Public Comment and Submission Form.'' Please include your name, company name (if any), and ''FAR Case 2009–010'' on your attached document.

- *Fax*: 202–501–4067.
- *Mail*: General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2009–010, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Millisa Gary, Procurement Analyst, at (202) 501–0699 for clarification of content. Please cite FAC 2005–32, FAR case 2009–010. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 6.2 of the OMB Memorandum M–09–10, ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,'' (Pub. L. 111–5) (Recovery Act). In addition, this rule enables the Governmentwide Point of Entry (*https://www.fedbizopps.gov*) to be leveraged for the purpose of fulfilling sections 1526(c)(4) and 1554 of Division A of the Recovery Act.

On February 17, 2009, the President signed the Recovery Act. On February 18, 2009, the Director of OMB issued initial implementing guidance. One of the provisions of the OMB guidance is to provide accountability and transparency relative to publicizing contract actions. The OMB guidance requires that the FAR be amended to reflect:

1. Unique requirements for posting of presolicitation notices.
2. Unique requirements for announcing contract awards.
3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS).
4. Unique requirements for actions that are not fixed-price or competitive.

B. Discussion

In order to implement Section 6.2 of the OMB Guidance M–09–10, FAR Parts 4, 5, 8, 13, and 16 are amended as follows:

1. Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), in accordance with the instructions at *https://www.fpds.gov*.

2. Subpart 5.7 is added to direct the contracting officer to use the Governmentwide Point of Entry (*https://www.fedbizopps.gov*) to (a) identify the action as funded by the Recovery Act; (b) post pre-award notices for orders exceeding $25,000 for ''informational purposes only;'' (c) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and (d) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive, and include the rationale for using other than a fixed-price and/or competitive approach.

3. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the OMB guidance affects only internal government operations and provides a strong preference for using small businesses for the Recovery Act programs wherever possible. The interim rule does not impose any additional requirements on small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 5, 8, 13, and 16 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (FAC 2005–32, FAR Case 2009–010) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Recovery Act became effective upon enactment, and contracts using funds appropriated by the Act will soon be ready to award. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4, 5, 8, 13, and 16

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 5, 8, 13, and 16 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 5, 8, 13, and 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.605 by adding paragraph (c) to read as follows:

4.605 Procedures.

* * * * *

(c) The contracting officer, when entering data in FPDS, shall use the instructions at *https://www.fpds.gov* to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Add Subpart 5.7 to read as follows:

Subpart 5.7—Publicizing Requirements under the American Recovery and Reinvestment Act of 2009

Sec.
5.701 Scope.
5.702 Applicability.
5.703 Definitions.
5.704 Publicizing-preaward.
5.705 Publicizing-post-award.

Subpart 5.7—Publicizing Requirements under the American Recovery and Reinvestment Act of 2009

5.701 Scope.

This subpart prescribes posting requirements for presolicitation and award notices for actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act). The requirements of this subpart enhance transparency to the public.

5.702 Applicability.

This subpart applies to all actions expected to exceed $25,000 funded in whole or in part by the Recovery Act. Unlike subparts 5.2 and 5.3, this subpart includes additional requirements for orders and for actions that are not both fixed-price and competitive.

5.703 Definition.

As used in this subpart—

Task or delivery order contract means a ''delivery order contract,'' and a ''task order contract,'' as defined in 16.501–1. For example, it includes Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), and other indefinite-delivery/indefinite-quantity contracts, whether single award or multiple award. It also includes Federal Supply Schedule contracts (including Blanket Purchase Agreements under Subpart 8.4).

5.704 Publicizing-preaward.

(a)(1) Follow the publication procedures at 5.201.

(2) In addition, notices of proposed contract actions are required for orders of $25,000 or more, funded in whole or in part by the Recovery Act, which are issued under task or delivery order contracts. These notices are for ''informational purposes only,'' therefore, 5.203 does not apply. Contracting officers should concurrently use their usual solicitation practice (*e.g.*, e-Buy).

(b) Contracting officers shall use the instructions at the Governmentwide Point of Entry (GPE) (*https://www.fedbizopps.gov*) to identify proposed contract actions funded in whole or in part by the Recovery Act.

(c) Ensure that the description required by 5.207(a)(16) includes a narrative of the products and services (including construction) that is clear and unambiguous to the general public.

5.705 Publicizing-post-award.

Follow usual publication procedures at 5.301, except that the following supersede the exceptions at 5.301(b)(3) through (8):

(a) For any contract action exceeding $500,000, including all modifications and orders under task or delivery order contracts, publicize the award notice and ensure that the description required by 5.207(a)(16) includes a narrative of the products and services (including construction) that is clear and unambiguous to the general public.

(b) Regardless of dollar value, if the contract action, including all modifications and orders under task or delivery order contracts, is not both fixed-price and competitively awarded, publicize the award notice and include in the description the rationale for using other than a fixed-priced and/or competitive approach. These notices and the rationale will be available to the public at the GPE, so do not include any proprietary information or information that would compromise national security. The following table provides examples for when a rationale is required.

POSTING OF RATIONALE—EXAMPLES

Description of contract action	Posting rationale on special section of recovery.gov
(1) A contract is competitively awarded and is fixed-price.	Not Required.
(2) A contract is awarded that is not fixed-price..	Required
(3) A contract is awarded without competition..	Required
(4) An order is issued under a new or existing single award IDIQ contract.	Required if order is made under a contract described in (2) or (3).
(5) An order is issued under a new or existing multiple award IDIQ contract.	Required if one or both of the following conditions exist: (i) The order is not fixed-price. (ii) The order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle (*e.g.*, award is made pursuant to an exception to the fair opportunity process).
(6) A modification is issued.	Required if modification is made: (i) To a contract described in (2) or (3) above; or (ii) To an order requiring posting as described in (4) or (5) above.
(7) A contract or order is awarded pursuant to a small business contracting authority (*e.g.*, SBA's section 8(a) program).	Required if one or both of the following conditions exist: (i) The contract or order is not fixed-price; (ii) The contract or order was not awarded using competition (*e.g.*, a non-competitive 8(a) award).

(c) Contracting officers shall use the instructions at the Governmentwide Point of Entry (GPE) (*https://www.fedbizopps.gov*) to identify actions funded in whole or in part by the Recovery Act.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. Amend section 8.404 by revising the last sentence in paragraph (a); and by adding a new paragraph (e) to read as follows:

8.404 Use of Federal Supply Schedules.

(a) *General.** * * Therefore, when establishing a BPA (as authorized by 13.303–2(c)(3)), or placing orders under Federal Supply Schedule contracts using the procedures of 8.405, ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsize the requirement; but see paragraph (e) of this section for orders (including orders issued under BPAs) funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

* * * * *

(e) Publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5):

(1) Notices of proposed MAS orders (including orders issued under BPAs) that are for ''informational purposes only'' exceeding $25,000 shall follow the procedures in 5.704 for posting orders.

(2) Award notices for MAS orders (including orders issued under BPAs) shall follow the procedures in 5.705.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.105 by adding paragraph (d) to read as follows:

13.105 Synopsis and posting requirements.

* * * * *

(d) When publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5):

(1) Notices of proposed contract actions shall follow the procedures in 5.704 for posting orders.

(2) Award notices shall follow the procedures in 5.705.

PART 16—TYPES OF CONTRACTS

■ 6. Amend section 16.505 by revising paragraph (a)(1); and adding paragraph (a)(10) to read as follows:

16.505 Ordering.

(a) * * *

(1) In general, the contracting officer does not synopsize orders under indefinite-delivery contracts; but see 16.505(a)(10) for orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

* * * * *

(10) Publicize orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) as follows:

(i) Notices of proposed orders shall follow the procedures in 5.704 for posting orders.

(ii) Award notices for orders shall follow the procedures in 5.705.

* * * * *

[FR Doc. E9–7019 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 2005–32; FAR Case 2009–009; Item IV; Docket 2009–0011, Sequence 1]

RIN 9000–AL21

Federal Acquisition Regulation; FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds.

DATES: *Effective Date*: March 31, 2009

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the FAR clause if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of Recovery Act funds.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–009, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–009'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–009. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2009–009'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, *Attn*: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2009–009, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–32, FAR case 2009–009. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act''), including a number of provisions to be implemented in Federal Government contracts. This interim rule implements section 1512, which is also known as the ''Jobs Accountability Act.'' Subsection (c) of section 1512 requires contractors that receive awards (or modifications to existing awards) funded, in whole or in part, by the Recovery Act to report quarterly on the use of the funds.

This FAR case adds a new subpart 4.15, and a new clause, 52.204–11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and Commercially Available Off-The-Shelf (COTS) item contracts are covered, as well as actions under the simplified acquisition threshold.

Contracting officers who obligate Recovery Act funds on existing contracts or orders must modify those contracts to add the new clause.

Contracting officers shall ensure that the contractor complies with the reporting requirements of the new clause. Contracting officers are not responsible for validating report content, only that a report was submitted as required. The online reporting tool will allow the contracting officer to monitor this as a matter of contract performance.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. Contractors will report the information, using the online reporting tool available at *http://www.FederalReporting.gov*, using instructions at that Web site. The online reporting tool is being developed for use by the July 10th timeframe. The data elements to be reported are outlined in the clause 52.204–11, in paragraph (d).

The Government intends to pre-populate as many data elements as possible to reduce the burden on contractors and first-tier subcontractors by using information available in other Government systems. For instance, the Government is considering pre-populating congressional districts based on nine-digit zip codes, funding agency, North American Industry Classification System (NAICS) code, and parent DUNS.

While Section 1512(c)(4) requires reporting on all Federal Financial Accountability and Transparency Act (FFATA) data elements, including the compensation information, it limits the reporting to first-tier subcontractors that meet the applicability requirements. The FAR clause requires this compensation disclosure for prime contractors, because to exclude prime contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of both FFATA and the Recovery Act.

B. Determinations

The Councils provide the following determinations with respect to the rule's applicability to contracts and subcontracts in amounts not greater than the simplified acquisition threshold, commercial items, and commercially available off-the-shelf (COTS) items.

1. *Applicability to contracts at or below the simplified acquisition threshold.* Section 4101 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them. Therefore, given section 1512 of the Recovery Act which requires that prime contractors report information on their use of Recovery funds, and the initial implementing guidance for the Recovery Act issued on February 18, 2009 by the Director of the Office of Management and Budget (OMB) committing to an unprecedented level of transparency and accountability for taxpayer dollars, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to contracts or subcontracts at or below the simplified acquisition threshold, as defined at 2.101.

2. *Applicability to Commercial Item contracts.* Section 8003 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 430), governs the applicability of laws to commercial items, and is intended to limit the applicability of laws to commercial items. FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for commercial items. The same applies for subcontracts for commercial items.

Therefore, given section 1512, of the Recovery Act, which requires that prime contractors report information on their use of recovery funds, and the initial implementing guidance for the Recovery Act issued on February 18, 2009 by the Director of the Office of Management and Budget (OMB) committing to an unprecedented level of transparency and accountability for taxpayer dollars, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to commercial items, as defined at 2.101, both at the prime and subcontract levels.

3. *Applicability to Commercially Available Off-The-Shelf (COTS) item contracts.* Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to the procurement of commercially available off-the-shelf (COTS) items, and is intended to limit the applicability of laws to them. Clinger-Cohen provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply. The same applies for subcontracts for COTS items.

Therefore, given section 1512, of the Recovery Act which requires that prime contractors report information on their use of recovery funds, and the initial implementing guidance for the Recovery Act issued on February 18, 2009 by the Director of the Office of Management and Budget (OMB) committing to an unprecedented level of transparency and accountability for taxpayer dollars, the Administrator, Office of the Federal Procurement Policy, has determined that it is in the best interest of the Federal Government to apply the rule to Commercially Available Off-The-Shelf (COTS) item contracts and subcontracts, as defined at FAR 2.101.

C. Request for Public Comments

The Councils ask for public comments on the interim rule, and the following additional issues:

1. The statute requires a description of the work (implemented at 52.204–11(d)(5)). Should the Government provide a list of broad categories of work under the Recovery Act from which the contractor would select and, if so, what should these be?

2. The definitions of ''jobs created'' and ''jobs retained'' are currently based on a conversion of part-time or temporary jobs into ''full-time equivalent'' (FTE) jobs. In order to do such a conversion, these part-time hours must be divided by the number of hours in a full-time schedule. This interim rule leaves the definition of full-time schedule to each individual company's discretion based on its existing practices. With respect to the methodology described in the interim rule for estimating jobs created or retained:

—Is the use of FTE and the description provided consistent with existing business practices and systems?

—Is a standardized methodology based on FTE necessary or do contractors have existing practices that adequately address other than full-time jobs to avoid inflating estimated numbers for jobs created and jobs retained? Should the Government allow contractors to use any method consistent with their existing practice as long as the contractor provides an

explanation of the methodology, including a description of how part-time and temporary employees are addressed?

—If the Government were to standardize the number of hours in a ''full-time schedule,'' would this increase the burden of reporting on jobs created or retained?

3. If the Government were to require companies to separately invoice for all supplies or services funded by the Recovery Act, what challenges would this pose? Are there any benefits?

4. Is there information not customarily provided that would make it easier for companies to segregate their invoices to separately identify items funded by the Recovery Act?

5. Are there challenges to obtaining the information required from first-tier subcontractors? If so, how could the rule be changed to ease the submission of this information from both a prime contractor and subcontractor perspective?

6. Does the definition of ''Total compensation'' used in the clause provide sufficient clarity? If not, what specifically should be clarified?

7. Would it be useful to provide an Alternate clause that would allow agencies to identify meaningful distinct ''projects'' within the contract for the purpose of requiring the contractor to report employment impact and progress by ''project'' rather than for the contract as a whole? For example, if the contract called for work in distinct geographic areas, the report might provide more meaningful information if the contractor were to report employment impact and progress separately by geographic area. This would not require individual reports but rather separate sections within the quarterly report.

8. Currently, this rule requires contractors to report on invoiced amounts because the Government assumed that it would be extremely difficult for the contractor employee responsible for report submission, to report on ''receipt of funds.'' Would a contractor be able to separately identify when Recovery Act funds were received and be able to identify the payment to particular deliverables? How difficult would this be to track and report on a quarterly basis?

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it requires contractors to report on their use of Recovery Act funds. An Initial Regulatory Flexibility Analysis has been prepared and the results of the analysis show that the direct cost of this rule on an average cost-per-contractor basis does not appear to rise to the level of being economically significant (*i.e.* $100,000,000); however, the Councils request comments on this finding.

Therefore, the Councils have prepared an Initial Regulatory Flexibility Analysis (IRFA) for public comment that is summarized as follows:

This Initial Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 603.

1. Reasons for the action.

This action implements section 1512 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which requires contractors to report quarterly on their use of Recovery Act funds.

2. Objectives of, and legal basis for, the rule.

The objective of the Recovery Act is to create jobs, restore economic growth, and strengthen America's middle class through measures that modernize the nation's infrastructure, enhance America's energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, protect those in greatest need, and provide for other purposes. This rule implements section 1512 of the Recovery Act which requires contractors, as a condition of receipt of funds, to report quarterly on their use of those funds. These reports will be made available to the public. The Recovery Act is designed to provide unprecedented transparency to the American taxpayer.

3. Description and estimate of the number of small entities to which the rule will apply.

The rule imposes a clause in any award document funded by the Recovery Act, requiring the contractor to publicly disclose information related to the use of funds and specific information about first-tier subcontract awards. This clause requires contractors to report on use of Recovery Act funds. The clause imposes a public reporting burden on prime contractors and, in a more limited way, on their first-tier subcontractors. According to the Federal Procurement Data System (FPDS), there are 129,331 active and unique prime Federal contractors. The estimate for the number of active and unique prime federal contractors that will participate in awards funded by the Recovery Act is 20,013, of which 4,003 or 20 percent are estimated to be small businesses. It is also noted that this is 20 percent of prime contractors, which should not be confused with the 23 percent small business contracting goal which is based on dollars and that continues to apply to both Recovery Act spending and agencies' ongoing procurement spending.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is 60,039 or three times the number of prime contractors. Of these 60,039 Recovery Act first-tier subcontractors, it is estimated that 25 percent, or 15,010, will be small businesses.

Based on the above, the estimated total number of small businesses, prime and subcontractors, to which this rule will apply is 19,013 and the estimated total number of other than small businesses to which this rule will apply is 61,039.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule requires Federal prime contractors, both small and other than small businesses, to report quarterly on their use of funds received under the Recovery Act. The rule applies to all Federal contractors regardless of size or business ownership. Such a report would probably be prepared by a company contract administrator or contract manager or a company subcontract administrator. The information required in the report is primarily information that companies would maintain for their own business purposes including, but not limited to, contract or other award number, the dollar amount of invoices, the supplies or services delivered, a broad assessment of progress towards completion, the estimated number of new jobs created or retained resulting from the award, and first-tier subcontract information (or aggregate information if the subcontract is less than $25,000, or the subcontractor is an individual or had gross income in the previous tax year of less than $300,000). While most of the data elements impose only one-time burden collection, some will require quarterly updates.

There are three data elements required in the report that will likely require some additional effort: (1) Estimating the cumulative number of jobs created each calendar quarter, (2) estimating the cumulative number of jobs retained each calendar quarter, and (3) providing the name and total compensation of each of the five most highly compensated officers of the contractor for the calendar year in which the contract is awarded, which applies at both the prime and first-tier subcontract level. The rule also requires the prime contractor to report certain information, required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), about first-tier subcontracts (though all awards under $25,000 will be aggregated, eliminating the need to report transaction-level data). The prime contractor will have most of this information in the subcontract award document, such as the name of the subcontractor, award number, and date of award. However, the prime contractor will have to obtain four of the elements directly from the first-tier subcontractor: (1) The unique identifier (DUNS Number) ''for awards of $25,000 or more'' as well as for the

subcontractor's parent company, if the subcontractor has a parent company, (2) subcontractor's physical address, (3) subcontract primary performance location, and (4) the compensation information described earlier as required by FFATA and reflected in section 1512 of the Recovery Act.

With respect to the DUNS Number, we anticipate that most first-tier subcontractors have a DUNS Number as it is a requirement for receipt of any Government contract. However, a company that never received nor anticipated a Government contract might not have a DUNS number and will have to register for one with Dunn and Bradstreet. The registration process is not burdensome, can be done online or by phone, and requires only information any company would have on hand for business purposes. First-tier subcontractors are not required to register in the Central Contractor Registration (CCR) as a consequence of this rule.

With respect to compensation information, this requirement results from FFATA and will not apply if the public has access to information about compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. Otherwise, each prime contractor and first-tier subcontractors will have to disclose the compensation information if it received (1) 80 percent or more of annual gross revenues in Federal awards; and (2) $25M or more in annual gross revenue from Federal awards. Because this requirement of FFATA became law on December 26, 2007, we anticipate that those companies to which it applies are aware of the requirement and have been preparing to provide this information.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The rule includes the reporting requirements stipulated by FFATA in FAR Case 2008–039 FFATA flow-down and 2008–037 Financial Disclosure.

These cases are in process and as they are finalized, they will be amended to ensure that they do not duplicate, overlap, or conflict with the requirements of this interim rule.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

The rule requires Federal prime contractors to respond to all of the reporting requirements, eliminating some of the reporting burden on first-tier subcontractors despite the fact that they will have to provide some information to the prime contractor. Also, all of the reporting elements applied to first-tier subcontractors, a significant percentage of which will be small businesses, are one-time collection burdens. The Government believes that the rule will further minimize the reporting burden on Government contractors, including all small businesses, as well as other businesses, by using existing Federal acquisition/registration systems to pre-populate certain data elements.

The FAR Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 4 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–32, FAR case 2009–009), in all correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat forwarded an emergency information collection request for approval of new information collection requirements to the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35, *et seq.* OMB approved the new information collection requirements as follows:

1. OMB Control No. 9000–0166—One Time Reporting Requirements for Prime Contractors.

2. OMB Control No. 9000–0167—One Time Reporting for First-tier Subcontractors.

3. OMB Control No. 9000–0168—One Time Reporting, Compensation Requirements.

4. OMB Control No. 9000–0169—Quarterly Reporting for Prime Contractors.

Comments on the interim rule as well as the collection will be considered in the revisions to both the rule and the collection.

Any award funded by the Recovery Act will contain the clause at 52.204–11. This clause requires contractors to report on use of Recovery Act funds. The clause imposes public reporting burden on prime contractors and, in a more limited way, on their first-tier subcontractors. According to the Federal Procurement Data System (FPDS), there are 129,331 active and unique prime Federal contractors as of February 2009. The estimate for the number of active and unique prime Federal contractors that will participate in awards funded by the Recovery Act is 20,013. This is based on using a factor of .16 of 129,331, derived by dividing 129,331 by $517B in procurement obligations for fiscal year 2008 or by dividing estimated Recovery Act dollars for contracts ($80B: Government's best estimate of Recovery Act dollars to be obligated by contracts is between $60 and $80 billion; using $80 billion for calculation purposes) by $517B. Of the estimated 20,013 Recovery Act prime contractors, it is estimated that 20 percent, or 4,003, will be small businesses. It should be noted that this is 20 percent of prime contractors; this should not be confused with the 23 percent small business contracting goal which is based on dollars and that continues to apply to both Recovery Act spending and agencies' ongoing procurement spending.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is 60,039. This was derived by estimating three first-tier subcontractors for each prime contractor. Of these 60,039 Recovery Act first-tier subcontractors, it is estimated that 25 percent, or 15,010, will be small businesses.

Based on the above, the estimated total number of small businesses, prime and subcontractors, to which this rule will apply is 19,013 and the estimated total number of other than small businesses to which this rule will apply is 61,039.

Though Section 1512 requires that the reports be completed by the prime contractor for all data elements, for practical purposes, the prime contractor will have to obtain certain information from their first-tier subcontractors, hence the flow-down requirements of paragraph (d)(10) of the clause. Additionally, the information required on the prime contractor award varies from that required for the first-tier subcontract awards. For instance, the elements at paragraphs (d)(1) through (9) are collection burdens associated with the prime contract award while the elements in (d)(10)(i) through (ix) are associated with first-tier subcontracts.

Finally, the elements required by Section 1512 of the Recovery Act are a combination of those that will be updated in each quarterly report, such as jobs created and retained and progress towards completion of the overall purpose and expected outcomes or results of the contract and those that are one-time collection burdens, such as award number and date and all of the reporting requirements for first-tier subcontracts. Therefore, the following analysis separately estimates the burden associated with the one-time reporting elements and those that are updated quarterly. The parenthetical reference after the description of each reporting element refers to the FAR clause. The hours estimated per response include the time for reviewing instructions, searching existing data sources, gathering the data, and completing the collection of information. The estimated total annual burden associated with reporting requirements of FAR 52.204–

11 is $31,725,468, based on the following:

One-Time Reporting Elements

1. *OMB Control No. 9000–0166—One Time Reporting Requirements for Prime Contractors*. One-time reporting elements for which the burden is imposed on the prime contractor include the following:

a. The award number for both its Government contract and first-tier subcontracts ((d)(1) and (d)(10)(viii));

b. Program or project title, if any, for its Government contract ((d)(4));

c. A description of the overall purpose and expected outcomes or results of the contract and first-tier subcontracts, including significant deliverables and, if appropriate, units of measure ((d)(5) and (d)(10)(vii));

d. Name of the first-tier subcontractor ((d)(10)(ii));

e. Amount of the first-tier subcontract award ((d)(10)(iii));

f. Date of the first-tier subcontract award ((d)(10)(iv));

g. Applicable North American Industry Classification System (NAICS) code ((d)(10)(v)); and

h. Funding agency ((d)(10)(vi)).

We estimate the total annual public cost burden for these elements to be $850,544 based on the following:

Respondents: 20,013.

Responses per respondent: 1.25 (reflects estimate that 25 percent of contractors will have more than one Recovery Act funded award on which to report).

Total annual responses: 25,016.

Preparation hours per response: .5.

Total response burden hours: 12,508.

Average hourly wages ($50.00+36.35 percent overhead): 68.00.

Estimated cost to the public: $850,544.

2. *OMB Control No. 9000–0168—One Time Reporting, Compensation Requirements*. A one-time reporting element for which the burden is imposed on certain prime contractors and first-tier subcontractors to publicly disclose the names and total compensation of each of the contractor's or first-tier subcontractor's five most highly compensated officers, for the calendar year in which the award was made ((d)(8) and (d)(10)(xi)) (see applicability requirements in the clause at (d)(8) and (d)(10)).

While Section 1512(c)(4) of the Recovery Act requires reporting on all FFATA data elements, including the compensation information, it limits the prime's reporting responsibility to first-tier subcontractors that meet the applicability requirements. The FAR clause requires this compensation disclosure for prime contractors as well because to exclude prime contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of both FFATA and the Recovery Act.

There are likely to be some prime contractors that already provide public access to the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this analysis, the Government estimates that 5 percent of prime contractors already provide such public access. There are also likely to be some first-tier subcontractors that do not meet either of the revenue thresholds for applicability. For purposes of this analysis, the Government estimates that 5 percent of first-tier subcontractors will not have to disclose compensation information because they do not meet the revenue thresholds.

We estimate the total annual public cost burden for these elements to be $19,392,444, based on the following:

Respondents: 76,049 (20,013 primes-5 percent=19,012+60,039 first-tier subcontractors-5 percent=57,037).

Responses per respondent: 1.25 (reflects estimate that 25 percent of all respondents will have more than one Recovery Act funded award on which to report).

Total annual responses: 95,061.

Preparation hours per response: 3.

Total response burden hours: 285,183.

Average hourly wages ($50.00+36.35 percent overhead): $68.00.

Estimated cost to the public: $19,392,444.

3. *OMB Control No. 9000–0167—One Time Reporting for First-tier Subcontractors.*

One-time reporting elements for which the burden is imposed only on the first-tier subcontractor include the following:

a. Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company ((d)(10)(i));

b. Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable((d)(10)(ix)); and

c. Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable ((d)(10)(x)).

The Government expects that most first-tier subcontractors will have a DUNS number. However, if a company has never received nor anticipated a Government contract, it would be required to register for a DUNS number which is not an onerous process and can be done online or by phone using information a company would have on hand for business purposes.

We estimate the total annual public cost burden for these elements to be $1,275,816, based on the following:

Respondents: 60,039.

Responses per respondent: 1.25 (reflects estimate that 25 percent of first-tier subcontractors will have more than one Recovery Act funded award on which to report).

Total annual responses: 75,049.

Preparation hours per response: .25.

Total response burden hours: 18,762.

Average hourly wages ($50.00+36.35 percent overhead):$68.00.

Estimated cost to the public: $1,275,816.

4. *OMB Control No. 9000–0169—Quarterly Reporting for Prime Contractors*. Elements updated quarterly for which the burden is imposed on the prime contractor include the following:

a. The amount of Recovery Act funds invoiced by the contractor, cumulative since the beginning of the contract ((d)(2));

b. A list of all significant services performed or supplies delivered, including construction, for which the contractor has invoiced ((d)(3));

c. An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act ((d)(6));

d. A narrative description of the employment impact of the Recovery Act funded work ((d)(7)(i) through (ii)); and

e. For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under $300,000, the contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount ((d)(9)).

We estimate the total annual public cost burden for these elements to be $10,206,664, based on the following:

Respondents: 20,013.

Responses per respondent: 1.25 (reflects 4 reports multiplied by a factor of 1.25 to reflect Government's estimate that 25 percent of contractors will have more than one Recovery Act funded award on which to report).

Total annual responses: 100,065.

Preparation hours per response: 1.5.
Total response burden hours: 150,098.
Average hourly wages ($50.00+36.35 percent overhead): $68.00.
Estimated cost to the public: $10,206,664.

F. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 1, 2009 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite the applicable OMB Control No.: 9000–0166; 9000–0167; 9000–0168; or 9000–0169, and FAR Case 2009–009, American Recovery and Reinvestment Act—Reporting Requirements, in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite the applicable OMB Control No.: 9000–0166, 9000–0167; 9000–0168; or 9000–0169, and FAR Case 2009–009, American Recovery and Reinvestment Act—Reporting Requirements, in all correspondence.

The Paperwork Reduction Act applies to this interim rule.

G. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the American Recovery and Reinvestment Act of 2009 became effective on enactment on February 17, 2009, and agencies are ready to award contracts using funds appropriated by the Act. Without a FAR clause, agencies will be forced to develop their own clause, which would (1) significantly increase the costs for Government as well as contractors who may have to comply with varied clauses and reporting mechanisms, (2) increase the risk of non-compliance, and (3) degrade transparency and public understanding. Waiting for public comment prior to issuing a clause will require resource-intensive and costly post-award bilateral negotiations and may hinder recovery. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Add subpart 4.15 to read as follows:

Subpart 4.15–American Recovery and Reinvestment Act—Reporting Requirements

Sec.
4.1500 Scope of subpart.
4.1501 Procedures.
4.1502 Contract clause.

4.1500 Scope of subpart.

This subpart implements section 1512(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), which requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The subpart also implements the data elements of the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109–282). Contractors that receive awards (or modifications to existing awards) funded, in whole or in part by the Recovery Act, must report information including, but not limited to—

(a) The dollar amount of contractor invoices;

(b) The supplies delivered and services performed;

(c) An assessment of the completion status of the work;

(d) An estimate of the number of jobs created and the number of jobs retained as a result of the Recovery Act funds;

(e) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded; and

(f) Specific information on first-tier subcontractors.

4.1501 Procedures.

(a) In any contract action funded in whole or in part by the Recovery Act, the contracting officer shall indicate that the contract action is being made under the Recovery Act, and indicate which products or services are funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the contract instrument.

(b) To maximize transparency of Recovery Act funds that must be reported by the contractor, the contracting officer shall structure contract awards to allow for separately tracking Recovery Act funds. For example, the contracting officer may consider awarding dedicated separate contracts when using Recovery Act funds or establishing contract line item number (CLIN) structures to mitigate commingling of Recovery funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements. If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies.

(d) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

4.1502 Contract clause.

Insert the clause at 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds. Contracting officers shall ensure that this clause is included in any existing contract or

order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing contracts and orders if the clause at 52.204–11 is not incorporated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 52.204–11 to read as follows:

52.204–11 American Recovery and Reinvestment Act—Reporting Requirements

As prescribed in 4.1502, insert the following clause:

American Recovery and Reinvestment Act—Reporting Requirements (MAR 2009)

(a) *Definitions.* As used in this clause—

Contract, as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16.

First-tier subcontract means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

Jobs created means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as ''full-time equivalent'' (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Jobs retained means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as ''full-time equivalent'' (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Total compensation means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6). *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at *http://www.FederalReporting.gov*.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under $300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over $25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(*1*) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(*2*) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of clause)

■ 4. Amend section 52.212–5 by revising the date of the clause; and redesignating paragraphs (b)(4) through (b)(42) as (b)(5) through (b)(43), respectively, and adding a new paragraph (b)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (MAR 2009)

* * * * *

(b) * * *

_ (4) 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements (MAR 2009) (Pub. L. 111–5).

* * * * *

[FR Doc. E9–7025 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 14, 15, and 52

[FAC 2005–32; FAR Case 2009–011; Item V; Docket 2009–0012, Sequence 1]

RIN 9000–AL20

Federal Acquisition Regulation; FAR Case 2009–011, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act) with respect to Sections 902, 1514, and 1515 of Division A.

DATES: *Effective Date:* March 31, 2009.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after the effective date of this rule. Contracting officers shall modify, on a bilateral basis, in accordance with FAR 1.108(d)(3), existing contracts to include the FAR clauses (Alternates) for future orders, if Recovery Act funds will be used. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of Recovery Act funds.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2009–011, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–011'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–011. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2009–011'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2009–011, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. Please cite FAC 2005–32, FAR case 2009–011. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements the American Recovery and Reinvestment Act of 2009 (Recovery Act) with respect to Sections 902, 1514, and 1515, by adding alternate clauses to 52.214–26, ''Audit and Records–Sealed Bidding,'' 52.212–5, ''Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items,'' and FAR 52.215–2, ''Audit and Records-Negotiation.''

Further, FAR 12.504(a)(7) is amended for contracts using Recovery Act funds to apply 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, to commercial item subcontracts that are otherwise exempt when subcontractors are not required to provide cost or pricing data.

Likewise, 13.006(d) is amended for contracts using Recovery Act funds to apply 52.215–2, ''Audit and Records-Negotiation'' to contracts and subcontracts which are otherwise exempt because they are under the simplified acquisition threshold. This requirement provides further transparency into Federal contracting whose contracts are funded with Recovery Act funds.

B. Discussion

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009, which includes a number of provisions to be implemented in Federal Government contracts. Among these provisions are sections 902, 1514, and 1515 which serve to ''prevent the fraud, waste, and abuse'' of Recovery Act

funds through the review and audit of contracts using such funds. The interim rule is necessary to implement these measures to both protect, and provide transparency in the use of, Recovery Act funds.

Section 1514 provides for agency inspector general review of concerns raised by the public regarding investments of funds under the Recovery Act. Sections 902 and 1515 provide for respectively, Comptroller General and agency inspector general reviews of any records of the contractor or subcontractor regarding transactions using Recovery Act funds, and the interview of contractor officers or employees concerning such transactions. Section 902 also provides for the Comptroller General to interview subcontractor employees, while nowhere in the Recovery Act is corresponding authority provided to the agency inspector generals. The authority for Comptroller General audits of prime contractors already exists for Part 12 contracts under FAR 52.212–5, ''Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items'' and for Part 15 contracts under FAR 52.215–2, ''Audit and Records–Negotiation.'' FAR 52.215–2 also provides authority to audit subcontracts, while 52.212–5 does not provide corresponding authority. In the case of Part 13 contracts there are no authorities for the audit of either prime contracts or subcontracts. Likewise, except in the case of modifications involving cost or pricing data, for Part 14 contracts there are no authorities for the audit of either prime contracts or subcontracts.

In the matter of interviewing contractor or subcontractor employees concerning contracting transactions there are no current authorities under the FAR (but see changes under Item VI of this FAC 2005–32, FAR Case 2008–026).

Consequently, for contracts using Recovery Act funds this interim rule provides the following authorities to the Comptroller General:

- For Part 12 contracts the authority to audit subcontracts, and to interview contractor and subcontractor personnel, including contracts below the simplified acquisition threshold.
- For Part 15 contracts the authority to interview contractor and subcontractor personnel, including contracts below the simplified acquisition threshold.
- For Part 14 contracts the authority to audit both contracts and subcontracts, and to interview contractor and subcontractor personnel, including contracts below the simplified acquisition threshold.

The interim rule provides the same authorities in the preceding paragraph to agency inspector generals, with the exception of interviewing subcontractor employees.

C. Applicability to Commercial Item Contracts

Section 8003 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 430), governs the applicability of laws to commercial items, and is intended to limit the applicability of laws to commercial items. FASA provides if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for commercial items. The same applies for subcontracts for commercial items.

Therefore, given Sections 902 and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which require Comptroller General and agency inspector general access to contractor and subcontractor records and contractor personnel, the FAR Council has determined this rule should apply to commercial items, as defined at 2.101, both at the prime and subcontract levels.

D. Applicability to Commercially Available Off-The-Shelf (COTS) Item Contracts

Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to the procurement of commercially available off-the-shelf (COTS) items, and is intended to limit the applicability of laws to them. Clinger-Cohen provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply.

Therefore, given Sections 902 and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which require Comptroller General and agency inspector general access to contractor and subcontractor records and contractor personnel, the Administrator, Office of the Federal Procurement Policy, has determined the rule should apply to Commercially Available Off-The-Shelf (COTS) item contracts, as defined at FAR 2.101.

E. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them. Therefore, given Sections 902 and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), which require Comptroller General and agency inspector general access to contractor and subcontractor records and contractor personnel, the FAR Council has determined this rule should apply to contracts or subcontracts at or below the simplified acquisition threshold, as defined at 2.101.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

F. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it requires contractors to make available existing records of transactions covered by the Act. Contractors are not obligated to create additional records. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12, 13, 14, 15, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (FAC 2005–32, FAR Case 2009–011) in correspondence.

G. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this interim rule. However, the information collection requirements imposed by the changes to 52.214–26 and 52.215–2 are currently covered by the approved collection

under OMB Control number 9000–0034 entitled, Examination of Records by Comptroller General and Contract Audit: Sections Affected 52.215–2; 52.212–5; 52.214–26, for these existing provisions. The Councils believe changes due to the use of these provisions will not result in a substantial increase in either the burden or the number of entities. However, the Council welcomes comments on both of these items as part of the 60-day comment period.

H. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the American Recovery and Reinvestment Act of 2009 became effective upon enactment, and contracts using funds appropriated by the Recovery Act will soon be ready to award. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 13, 14, 15, and 52

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director,Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 13, 14, 15, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 13, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.301 by revising paragraph (b)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(4) *The clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212–5(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by 52.104(d). When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.

(ii) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), the contracting officer shall use the clause with its Alternate II, and may not use Alternate I.

* * * * *

■ 3. Amend section 12.504 by revising paragraph (a)(7) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(7) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see 15.209(b)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Amend section 13.006 by revising paragraph (d) to read as follows:

13.006 Inapplicable provisions and clauses.

* * * * *

(d) 52.215–2, Audits and Records—Negotiation, except as used with its Alternate I, when using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

* * * * *

PART 14—SEALED BIDDING

■ 5. Amend section 14.201–7 by revising paragraph (a) to read as follows:

14.201–7 Contract Clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–26, Audit and Records-Sealed Bidding, in solicitations and contracts as follows:

(1) Use the basic clause if—

(i) The acquisition will not use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); and

(ii) The contract amount is expected to exceed the threshold at 15.403–4(a)(1) for submission of cost or pricing data.

(2) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, use the clause with its Alternate I in all solicitations and contracts.

* * * * *

■ 6. Amend section 15.209 by revising the introductory text of paragraph (b)(1) and adding paragraph (b)(2) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall insert the clause at 52.215–2, Audit and Records-Negotiation (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133), in solicitations and contracts except those for—

* * * * *

(2) When using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5)—

(i) The exceptions in paragraphs (b)(1)(i) through (b)(1)(iii) are not applicable; and

(ii) Use the clause with its Alternate I.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by adding Alternate II to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Alternate II (MAR 2009). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(B) 52.219–8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(C) 52.222–26, Equal Opportunity (Mar 2007) (E.O. 11246).

(D) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(E) 52.222–36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(F) 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(G) 52.222–41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

(H) 52.222–50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(I) 2.222–51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

(J) 52.222–53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

(K) 52.222–54, Employment Eligibility Verification (Jan 2009).

(L) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110–247). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.

(M) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

■ 8. Amend section 52.214–26 by adding Alternate I to read as follows:

52.214–26 Audit and Records—Sealed Bidding.

* * * * *

Alternate I (*MAR 2009*). As prescribed in 14.201–7(a)(2) substitute the following paragraphs (c) and (e) for paragraphs (c) and (e) of the basic clause:

(c) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(1) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract or a subcontract hereunder; and

(2) Interview any officer or employee regarding such transactions.

(e)(1) Except as provided in paragraph (e)(2), the Contractor shall insert a clause containing the provisions of this clause, including this paragraph (e), in all subcontracts.

(2) The authority of the Inspector General under paragraph (c)(2) of this clause does not flow down to subcontracts.

■ 9. Amend section 52.215–2 by adding Alternate I to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Alternate I (MAR 2009). As prescribed in 15.209(b)(2), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) *Comptroller General or Inspector General.* (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

[FR Doc. E9–7029 Filed 3–30–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 2005–32; FAR Case 2008–026; Item VI; Docket 2009–0013, Sequence 1]

RIN 9000–AL25

Federal Acquisition Regulation; FAR Case 2008–026, GAO Access to Contractor Employees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) which allows the Government Accountability Office to interview current contractor employees during the audit of the contractor's records. FAR 52.215–2(d)(1), Audit and Records-Negotiation, is revised to allow for the

required access by inserting before the period: ''and to interview any current employee regarding such transactions''. FAR 52.214–26(c), Audit and Records-Sealed Bidding is revised to allow for the required access by inserting before the period: ''and also the right to interview any current employee regarding such transactions''.

DATES: *Effective Date:* March 31, 2009.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 1, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–32, FAR case 2008–026, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–026'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–026. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–026'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–32, FAR case 2008–026, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Neurauter, Procurement Analyst, at (202) 219–0310 for clarification of content. Please cite FAC 2005–32, FAR case 2008–026. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) added language allowing the Comptroller General to interview current employees regarding transactions being examined during an audit of contracting records. The Act revises 41 U.S.C. 254d(c)(1) and 10 U.S.C. 2313(c)(1) by inserting before the period: ''and to interview any current employee regarding such transactions''. To implement the Act, FAR clauses 52.215–2, Audit and Records-Negotiation and 52.214–26, Audit and Records-Sealed Bidding, are amended to add the required statutory language. The statute did not specify that Section 871 apply to commercial item contracts and therefore was not applied to FAR clause 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Order-Commercial Items. Section 34 of the Office of Federal Procurement Policy Act (OFPP), 41 U.S.C. 430, exempts commercial item acquisitions from new provisions of law, such as Section 871, unless (1) the law provides criminal or civilian penalties, (2) the law expressly refers to 41 U.S.C. 430 and states that it applies to commercial item contracts, or (3) the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt commercial item contracts. Thus, this new provision was added to the list of inapplicable laws at FAR 12.503(a).

This is a significant regulatory action and, therefore, was subject to review under Section 6 of Executive Order 12886, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.* Only a small number of small businesses are audited by GAO. Currently many GAO audits of small business contractors include contractor employee interviews. This Act is designed to cover those incidents in which contractor employees are not able to be interviewed. Therefore, it is not anticipated that interviewing any current employee regarding such contract transactions will have a significant impact.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* FAC 2005–32, FAR Case 2008–026 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement statutory requirements of Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417) which went into effect October 14, 2008. The Act revises 41 U.S.C. 254d (c)(1) and 10 U.S.C. 2313 (c)(1) by inserting before the period: ''and to interview any current employee regarding such transactions''. To implement the Act, the clauses at FAR 52.215–2(d)(1) and 52.214–26(c) are amended to add the required statutory language. The Councils believe that the interim rule in the FAR will provide the contracting officer the relevant regulatory guidance needed when addressing requirements outlined in this rule. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.503 by adding paragraph (a)(8) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) * * *

(8) 41 U.S.C. 254d(c)(1) and 10 U.S.C. 2313(c)(1), GAO Access to Contractor Employees, Section 871 of Pub. L. 110–417 (see 52.214–26 and 52.215–2).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.214–26 by revising the date of the clause and paragraph (c) to read as follows:

52.214–26 Audit and Records—Sealed Bidding.

* * * * *

Audit and Records-Sealed Bidding (MAR 2009)

* * * * *

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

* * * * *

(End of clause)

■ 4. Amend section 52.215–2 by revising the date of the clause and paragraph (d)(1) to read as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Audit and Records—Negotiation (MAR 2009)

* * * * *

(d) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

* * * * *

(End of clause)

[FR Doc. E9–7030 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2009–0002, Sequence 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–32; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–32 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–32 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–32

Item	Subject	FAR case	Analyst
I	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim).	2009–008	Murphy.
II	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim).	2009–012	Parnell.
III	American Recovery and Reinvestment Act of 2009 (theRecovery Act)—Publicizing Contract Actions (Interim).	2009–010	Gary.
IV*	American Recovery and Reinvestment Act of 2009 (theRecovery Act)—Reporting Requirements (Interim).	2009–009	Woodson.
V	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access (Interim).	2009–011	Chambers.
VI	GAO Access to Contractor Employees (Interim)	2008–026	Neurauter.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–32 amends the FAR as specified below:

Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009–008)

This interim rule implements the Buy American provision, section 1605, of the American Recovery and Reinvestment Act of 2009. It prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. However, section 1605 requires that the Buy American requirement be applied in a manner consistent with U.S. obligations under international agreements. Moreover, because Congress intended that least developed countries be excepted from section 1605, least developed countries can continue to be treated as designated countries. Section 1605 also provides for waivers under certain limited circumstances.

Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009–012)

Subpart 3.9 of the Federal Acquisition Regulation (FAR) is revised to add section 3.907. Section 3.907 provides procedures for whistleblower protection, when using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Section 3.907 provides that non-Federal employers are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials. This section

further provides definitions relevant to the statute; establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority.

A new clause 52.203–15 is added to require contractors to post rights and remedies for whistleblower protections under Section 1553 of the American Recovery and Reinvestment Act.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim) (FAR Case 2009–010)

This interim rule implements the Office of Management and Budget's Guidance, M–09–10, ''Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,'' dated February 18, 2009, section 6.2. Federal Acquisition Regulation (FAR) Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), in accordance with the instructions at *https://www.fpds.gov*. Subpart 5.7 is added to direct the contracting officer to use the Governmentwide Point of Entry (*https://www.fedbizopps.gov*) to (1) identify the action as funded by the Recovery Act; (2) post pre-award notices for orders exceeding $25,000 for ''informational purposes only;'' (3) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and (4) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive, and include the rationale for using other than a fixed-price and/or competitive approach. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

Item IV—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements (Interim) (FAR Case 2009–009)

This interim rule implements section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds. The rule adds a new subpart 4.15, and a new clause, 52.204–11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This clause applies to Commercial item contracts and Commercially-Available-Off-The-Shelf (COTS) item contracts as well as actions under the Simplified Acquisition Threshold.

Contracting officers who wish to use Recovery Act funds on existing contracts should modify those contracts to add the clause.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

Item V—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—GAO/IG Access (Interim) (FAR Case 2009–011)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009.

Collectively, these Sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to 52.212–5, ''Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items,'' 52–214–26, ''Audit and Records–Sealed Bidding,'' and 52.215–2, ''Audit and Records–Negotiation.'' For the Comptroller General these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency inspector generals receive the same authorities, with the exception of interviewing subcontractor employees.

Item VI—GAO Access to Contractor Employees (Interim) (FAR Case 2008–026)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 12 and 52. Clauses 52.215–2, Audit and Records-Negotiation and 52.214–26, Audit and Records-Sealed Bidding are being modified to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule will not apply to the acquisition of commercial items; therefore, FAR 12.503 will be amended to add the exemption of this rule. This change implements Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110–417).

Dated: March 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–7024 Filed 3–30–09; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
March 31, 2009

Part III

Department of Veterans Affairs

38 CFR Part 21
Post-9/11 GI Bill; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AN10

Post-9/11 GI Bill

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to establish regulations regarding a new educational assistance program for individuals who serve on active duty after September 10, 2001. The new program, known as the Post-9/11 GI Bill, was authorized by title V of the Supplemental Appropriations Act, 2008 (Post-9/11 Veterans Educational Assistance Act of 2008). This final regulation includes the rules necessary to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill.

DATES: *Effective Date:* This final rule will become effective on August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Brandye R. Terrell, Regulation Development Team Leader, Education Service, Department of Veterans Affairs (225C), 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 461–9822. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 23, 2008 (73 FR 78876), VA published a proposal to establish VA regulations to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill. Interested persons were invited to submit written comments on or before January 22, 2009. We received comments from 38 organizations and 8 individuals. We have made several changes based on these comments.

Eligibility

One commenter stated that the period of eligibility for retirees is not specifically addressed and noted that there is no definition of ''retiree'' in title 38, CFR. We did not define the term ''retiree'' or address retirees as a separate category in the regulation because an individual's period of eligibility is based on factors unrelated to the individual's status as a retiree. The period of eligibility for all individuals entitled to Post-9/11 GI Bill benefits is provided in § 21.9530. If the individual meets the eligibility requirements, the 15-year period of eligibility begins on the last date of discharge, without regard to the reason for separation, even if the individual was discharged prior to August 1, 2009, the effective date of the program.

We received three comments on the eligibility of members of the National Guard or Active Guard Reserve (AGR) serving on active duty under title 32, U.S.C. One commenter requested that these members be allowed to transfer Post-9/11 GI Bill benefits to their dependents. One commenter also suggested that any service under orders lasting 30 days or more that cite use of Operation Iraqi Freedom, Operation Enduring Freedom, or Operation Noble Eagle funds should be considered active duty for the purpose of the Post-9/11 GI Bill. Section 3301 of title 38, U.S.C., defines ''active duty'' as having the same meaning given such term in 38 U.S.C. 101(21)(A) for members of the regular components of the Armed Forces. This paragraph states that active duty means full-time duty in the Armed Forces, other than active duty for training. Active Duty is further defined in 38 U.S.C. 3301(1) to include a call or order to active duty under specific title 10 sections of the U.S. Code for members of the reserve components of the Armed Forces. Neither of the statutory definitions for active duty under section 3301(1) includes members of the National Guard or Active Guard Reserve serving under title 32, U.S.C.; therefore, we are unable to authorize eligibility for these individuals.

One commenter requested clarification on why commissioned officers of the Public Health Service (PHS) are excluded from eligibility for Post-9/11 GI Bill benefits. Another commenter requested a review of 42 U.S.C. 213(d) to determine if PHS officers qualify for the new benefit and suggested National Oceanic and Atmospheric Administration (NOAA) officers also be included as eligible. We agree that commissioned officers of PHS and NOAA are eligible for benefits under the Post-9/11 GI Bill. In a digested opinion from 1985, our General Counsel read the provisions of 42 U.S.C. 213 regarding PHS and 33 U.S.C. 857–1 and 857–3 (now in 33 U.S.C. 3002 and 3072, respectively) regarding NOAA as expanding the definition of ''Armed Forces'' in 38 U.S.C. 101(10) to also include PHS and NOAA for purposes of benefits administered by VA. *See* VADIGOP, 6–26–85 (8–28 Reentry in Active Service). Therefore, service as a commissioned officer of PHS or NOAA meets the ''active duty in the Armed Forces'' service requirement in section 3311 of title 38, U.S.C.

Transfer of Entitlement

Two commenters requested that retirees be allowed to transfer benefits to dependents. Two additional commenters wanted individuals to be allowed to transfer benefits to dependents even if they were unable to reenlist, or without their having to reenlist, if they met the minimum service requirements. While VA is responsible for administering payment of transferred benefits, the Department of Defense (DoD) is responsible for determining eligibility for transfer of entitlement to dependents. Specifically, the statute provides that the Secretary of Defense may authorize the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) to determine if individuals serving in the Armed Forces in their respective departments are eligible to transfer entitlement to dependents. As VA has no authority to determine eligibility for transfer of entitlement of educational assistance under the Post-9/11 GI Bill, individuals inquiring about eligibility for transfer of entitlement should contact DoD for information.

One commenter requested that VA clarify what happens to entitlement that was transferred under the Montgomery GI Bill (MGIB) if the transferor does not revoke the transferred entitlement before electing to receive benefits under the Post-9/11 GI Bill. Entitlement that was transferred under MGIB and not revoked prior to the transferor's election of Post-9/11 GI Bill benefits will remain available to the dependent to whom it was transferred. Dependents will remain eligible for transferred benefits under the provisions of the chapter from which benefits were transferred.

One commenter disagreed with the exclusion of transferred benefits as marital property. We made no change to this rule in the final regulation because 38 U.S.C. 3319(f)(3) prohibits the treatment of transferred entitlement as marital property.

We received one comment suggesting we specify the time limit for which dependents eligible for transferred entitlement may use their benefit. We make no change based on this comment as the period of eligibility for use of transferred benefits is listed in 38 CFR 21.9530, in paragraph (d) for spouses and in paragraph (e) for children.

One commenter recommended removing the kicker exclusion from the rate of payment for transferred benefits because there is no statutory provision limiting its payment to the dependent.

We agree that there is no statutory reason why kickers should not be paid to transferees. The Selected Reserve kicker is excluded under MGIB. In trying to be consistent, we excluded kickers from the Post-9/11 GI Bill also. While we intended to only exclude the Selected Reserve kicker, we inadvertently excluded all kickers. However, after reviewing the transfer-of-entitlement language used under MGIB and the Post-9/11 GI Bill, we find that, while the MGIB language is more restrictive and specifically pinpoints the section under which payments should be determined, the language in the Post-9/11 GI Bill is broader and simply says that individuals should receive the amount that the transferor would receive. Based on this language, we have changed the rate of payment for transferred benefits under the Post-9/11 GI Bill to include any kicker to which the transferor is entitled.

Another commenter suggested we clarify that ''veteran rate'' as used in 38 CFR 21.9570(k) means the dependent is eligible for the housing allowance. We do not agree that this term needs clarification. The term dependent is used to refer to both an eligible child and an eligible spouse or surviving spouse. A dependent child and surviving spouse will always receive transferred benefits in the same manner as an individual off active duty. This means that they will be eligible to receive the housing allowance if all other criteria are met. However, a dependent spouse will always receive benefits in the same manner as the transferor, thus he or she will not be eligible for the monthly housing allowance if the transferor is on active duty.

We received one comment suggesting we add reduction in force (RIF) to the list in 38 CFR 21.9570(l) of exceptions to the requirement that the transferor complete the service agreement that allowed the transferor to participate in the transferability program. We contacted DoD for clarification of what constitutes completion of a service agreement. DoD considers any individual released due to a disability or as a result of RIF to have completed his or her service agreement. Therefore, we amended the final rule to clarify that release due to a disability or as a result of RIF constitutes completion of the service agreement, and therefore does not result in loss of transferred entitlement for the transferor's dependents.

One commenter recommended allowing spouses to use their own Post-9/11 GI Bill benefits in addition to transferred benefits under the Post-9/11 GI Bill. We make no changes based on this comment since paragraph (m) of § 21.9570 states that all dependents may do this. The definition of dependent includes a spouse. Thus, spouses and children are both covered under this section. Spouses may use their own Post-9/11 GI Bill benefits and/or their transferred benefits.

Another commenter requested that the extension of entitlement provided in § 21.9635(o) be applied to a transferee if the transferor only transfers entitlement to one person. We do not agree to make this change because 38 U.S.C. 3319(d) specifically indicates that transferred entitlement may not exceed 36 months. Allowing an extension of entitlement for transferees would be a direct violation of the statute.

One commenter disagreed with the definition of ''child'' used in the proposed regulation. The commenter indicated that by adopting the definition of child as it is defined in § 3.57 (under the age of 18 or, if they are enrolled in school, under the age of 23), VA is defining the term narrower than required by legislation. The commenter recommended VA define child without the age requirements and, in addition, not make a distinction between a child and a foster child or stepchild.

Based on the definitions of child and spouse in the proposed regulation, DoD also expressed concern with regard to the loss of transferred entitlement for dependents who were deemed eligible for the program at the time of transfer, but who lost this eligibility based on their status at a later date. They contend that Post-9/11 GI Bill benefits belong to the veteran/servicemember and not the dependent. They base this on the provisions in 38 U.S.C. 3319(f) that allow the transferor to modify or revoke the transferred entitlement at any time within the transferor's 15-year eligibility period. DoD suggested VA apply the definitions of ''spouse'' and ''child'' effective the date of the transfer and disregard the dependent's status at the point the dependent utilizes the benefits.

We agree, in part, with these concerns and made clarifying changes in the final rule. A transferor may elect to transfer his or her entitlement to his or her child, but at the time of the designation the child must still meet the 38 U.S.C. 101(4) definition of ''child,'' *i.e.*, a legitimate child, a legally adopted child, a stepchild, or an illegitimate child, as those terms are explained in 38 CFR 3.57, and who is unmarried and under age 18, was permanently incapable of self-support before reaching age 18, or after attaining the age of 18 years and until completion of education or training (but not after attaining the age of 23 years) is pursuing a course of instruction at an approved educational institution. Thereafter, the child's subsequent marriage will not affect his or her entitlement. Finally, a child may continue to use entitlement so transferred until reaching age 26. If a transferor elects to transfer his or her entitlement to a spouse, a subsequent divorce will not affect the transferee's entitlement; however, the transferor retains the right to revoke or modify the transfer at any time.

Enrollment Certification

We received three comments requesting clarification on whether schools will be required to report the cost of dropped courses in order for VA to properly judge whether or not there has been an overpayment. One of the commenters asked if there will be a time limit for any refunds due to VA. We make no changes based on these comments. Schools are required to report the established charges associated with an individual's enrollment and, in the event an individual reduces the number of courses he or she is enrolled in, the established charges for the courses in which he or she remains enrolled. This process is the same process that is used in other educational assistance programs to certify enrollments and reductions of individuals training at less than one-half time or who are on active duty.

Furthermore, similar to existing procedures for other educational assistance programs, individuals will still be responsible for negotiating repayment of debts with our Debt Management Center or have money recouped from future payments. Schools that are required to return funds to VA, regardless of the reason, will send the money back electronically or send a payment to the Regional Processing Office's agent cashier.

We received two related comments regarding which charges should be reported to VA and whether VA will require certification of actual tuition and fees or estimated tuition and fees. One commenter stated that actual tuition and fees cannot be provided until an individual is invoiced and would require that schools certify each term separately. One commenter also requested clarification on whether fees should be reported regardless of pending aid, scholarships, state grants, etc. We make no changes based on these comments. The institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance and 38 U.S.C. 3313(h)(2) requires that VA

pay based on the actual tuition and fees charged to the student. Schools will be required to report actual tuition and fees in accordance with the statute.

One commenter requested that VA clarify the regulation to state that term-based institutions operating on a year-round basis should report on the same basis as other term-based institutions. We revised the language in paragraph (b) of § 21.9720 to clarify that institutions of higher learning organized on a year-round basis will report on the same basis as term-based institutions unless they do not offer courses on a term, quarter, or semester basis, in which case they will report enrollment for the length of the course.

Payments

One commenter indicated there currently is an approved apprenticeship program at an institution of higher learning and requested clarification on whether this program is payable under the Post-9/11 GI Bill. We cannot pay benefits for an apprenticeship or on-the-job training program at an institution of higher learning acting in the capacity of an employer. In order to be approved for Post-9/11 GI Bill benefits, individuals must be pursuing an approved program of education offered at an institution of higher learning. Section 21.4258(b)(iv), 38 CFR requires that institutions of higher learning list all approved programs of education in their catalog. If the program of education is offered by the institution of higher learning and is approved for the purposes of 38 U.S.C. chapter 30, VA will make the appropriate payment. Apprenticeship and on-the-job training programs are offered by employers and are generally not available to the entire student population. We have clarified the definition of ''program of education'' to state that ''the curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).''

Three commenters recommended expanding the advance payment option to include all educational assistance offered under the Post-9/11 GI Bill rather than limiting it to just the monthly housing allowance. Section 3680(d) of title 38, U.S.C., limits the amount of an advance payment to an amount equal to the first month, or fraction thereof, in which the individual is pursuing training plus the amount for the subsequent month of training. Under the Post-9/11 GI Bill, VA is required to pay the tuition and fees, books and supplies stipend, and other payments (*e.g.*, rural relocation, licensing or certification test reimbursement) in a lump sum. As a result, we are unable to apply the advance payment provisions to such lump-sum payments.

Overpayments

We received three comments asking whether individuals who withdraw as a result of being called to active duty will be required to repay benefits. One of the commenters also asked whether the school will be required to return the funds if an individual is called to active duty. We make no changes based on these comments. Individuals who withdraw as a result of being called to active duty will not have to repay tuition and fees, Yellow Ribbon Program contributions, or the book stipend. If they are in receipt of the housing allowance, it will be discontinued at the end of the month in which the withdrawal occurred. If the school processes a refund for tuition and/or fees, it should be issued to the student following the regularly prescribed standards and practices of the institution.

One commenter proposed that the institution of higher learning be responsible for making a refund to VA when the student does not register for a class certified in advance of the registration period, and for which the institution received tuition and fees on behalf of the student. We agree with this comment and have clarified in § 21.9695(b) that an overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. When an individual never attends a term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual.

Two commenters wanted to know why individuals will be held accountable for repayment of tuition and fees if the money is sent directly to the school, especially since individuals in VA's Vocational Rehabilitation and Employment Program are not required to make repayment of tuition and fees. We make no changes in the final rule based on this comment, but we are providing the following clarification concerning this issue. Section 3313(a) of title 38, U.S.C., states that the Secretary shall pay to each individual entitled to educational assistance the amounts specified in subsection (c) to meet the expenses of such individual's subsistence, tuition, fees, and other costs for pursuit of such program of education. Paragraph (g) of that section subsequently directs that payment of the tuition and fees be made directly to the institution of higher learning; however, it is clear that the benefit and the associated responsibilities belong to the individual.

Additionally, the authority to establish an overpayment against a school is limited by statute, per 38 U.S.C. 3685(b), to instances where the Secretary finds that an overpayment has been made to a veteran or eligible person as the result of willful or negligent failure to report or false certification. Therefore, unless an overpayment results from the actions or inactions described in section 3685(b), VA cannot collect from the school amounts of tuition and fees that were properly paid on behalf of the individual.

Conversely, if VA makes an erroneous or improper payment not resulting from the negligent or willful actions or inactions on the part of a school, the erroneous or improper payment may be recovered from the receiver. This situation may arise if a school certifies an individual for multiple terms but the individual does not attend all of the terms certified. Section 21.4203 of title 38, CFR provides that schools shall report without delay a change in enrollment. If VA issues a tuition and fees payment to the school on behalf of an individual for a term that the individual never attends VA will collect the full amount of the payment from the school.

One commenter suggested § 21.9695(b)(3) be revised to clarify that if an individual does not complete one or more courses, but does complete at least one course, that the individual will not have an overpayment equaling the total amount of all educational assistance paid, but rather only for the course or courses the individual did not complete. Based on this comment, we clarified this section to indicate that if a student withdraws from a course or courses, the overpayment will only be established for the course or courses from which the student withdraws, not the amount of all educational assistance for that enrollment period.

One commenter requested clarification of how an ''incomplete'' grade designation, for which the individual is given additional time to finish a course, will be treated and whether it will be considered an overpayment. We agree this issue should be addressed in the final rule, and have added a paragraph to

§ 21.9635(f) clarifying that if the institution of higher learning records an incomplete grade for an individual's course (or courses) and allows the individual additional time to complete the coursework, VA will not create an overpayment for those course(s) unless one of the following occurs: The individual fails to complete the course within the regularly prescribed standards of the institution or one year from the date the incomplete was assigned, whichever is earlier, or the individual is permanently assigned a nonpunitive grade.

One commenter requested that schools be required to refund money to VA that would otherwise normally be refunded to the student based on the school's refund policy. We make no changes based on this comment. Institutions of higher learning have refund policies individualized to their institutions and students would not know when or if a refund was sent to VA. Additionally, VA will determine the amount of the student's overpayment, if any, after processing the change in enrollment. The amount the school refunds to the student and the amount the student owes to VA will generally not be equal as VA will pay to the end of the month for any reduction during the drop add period or for which the student provides evidence of mitigating circumstances. To reduce confusion on how much is owed and to whom, schools should continue to refund money to students based on their regularly established policies.

Tuition and Fees

Two commenters requested clarification on why, in § 21.9640(a), the 70 percent level would apply instead of the 80 percent level if the individual met the service requirements at both levels. One of the commenters suggested removing the requirement to use the 70 percent level instead of the 80 percent level because it is not justified legislatively. We do not agree to make this change because 38 U.S.C. 3311(e) specifically provides that individuals entitled to educational assistance under paragraphs (4) and (5) of 38 U.S.C. 3311(b) will be entitled to educational assistance using the provisions of paragraph (5). Paragraph (4) establishes eligibility for individuals with at least 24 months but less than 30 months of service, including entry level and skill training. Paragraph (5) establishes eligibility for individuals with at least 18 months but less than 24 months of service, excluding entry level and skill training. If both levels of service requirements are met, the lower percentage level must be used; therefore, applying the higher percentage level would be contrary to the clear requirement of the statute.

We received several comments regarding the effectual relationship between tuition and fees payments under the Post-9/11 GI Bill and other forms of aid, such as State veterans' tuition programs. One of the commenters suggested that 1st payer/2nd payer rules be clarified so that all parties clearly understand who pays what and when. VA will pay based on the amount the student is charged, not the amount the student has remaining after State programs have contributed funds. Schools should certify the total amount of tuition and the total amount of fees that a student is charged. The amount reported to VA should not be reduced for pending or subsequent payments to be credited to the student's account from State programs, scholarships, grants, or any title IV funds (including Pell Grants). If an institution is not able to charge a veteran for tuition due to a State waiver or other State funded program, the school should not report tuition to VA. However, if the State reimburses the institution and/or veteran for tuition and fees after the individual has been billed, then the institution should report the original amount charged to the student. The amount of tuition and fees submitted to VA in these instances should not be reduced based on any additional funds received that will reduce the student's out-of-pocket expenses. One commenter also asked that we clarify whether a student can opt out of State assistance to receive educational assistance under the Post-9/11 GI Bill. There is no requirement in 38 U.S.C. chapter 33 that requires an individual to opt in or out of existing State programs in order to receive benefits under the Post-9/11 GI Bill. The statute simply states that VA may pay all or a portion of the cost of the actual tuition and fees charged the individual. Each State will need to review the laws that govern their State programs to determine if individuals may opt in or out of receiving assistance under the State funded programs.

One commenter suggested VA provide a non-exhaustive list of approved fees to clarify which fees would be payable under the Post-9/11 GI Bill and further suggested that health insurance premiums be included on the list. Another recommended that VA redefine fees to include those charged to all students (unless waived) enrolled in the same program of education as the VA benefit recipient. This commenter also recommended removing the requirement that the amount of fees that can be paid is limited to those charged to undergraduates. Finally, one commenter indicated support for the definition as stated in the proposed regulation. Based on these comments, we are amending the definition of fees in the final rule. Accordingly, ''fees'' will include any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education including, but not limited to, health insurance premiums, freshman fees, graduation fees, and lab fees. The term does not include study abroad fees unless the fees are assessed for courses that are required for completion of the program of education. The statute requires VA to calculate the highest in-State amount payable for tuition and fees using undergraduate tuition and fees. However, individuals may receive payment for tuition and fees for graduate programs or other approved programs up to the amount of the highest in-State amount payable for undergraduate fees.

One commenter suggested that VA clarify that the amounts payable for established charges and the book stipend are adjusted by the individual's eligibility percentage. We make no changes based on this comment. Section 21.9640(a) indicates that the amounts payable for pursuit of an approved program of education under that section are subject to the individual's eligibility percentage as determined by his or her aggregate length of creditable active duty service after September 10, 2001.

One commenter expressed concern that the tuition and fees payments made on behalf of students attending part-time are not lowered based on the student's rate of pursuit. The commenter indicated that not reducing the maximum amount payable based on rate of pursuit will reward students for pursuing education part-time instead of full-time. We do not agree that this is an area of concern. Many schools charge students proportionately less for part-time enrollment because they base charges on a per-credit-hour rate. Furthermore, the statute does not require VA to reduce the maximum amounts payable proportionally based on rate of pursuit. It only dictates that the maximum payable be reduced based on the eligibility percentage. Nonetheless, based on several other comments regarding tuition and fees payments, we are amending the final rule to clarify that individuals will receive a tuition payment not to exceed the amount determined by multiplying the number of certified credit hours for the term, quarter, or semester by the

highest in-State amount charged per credit hour. Individuals will receive the amount for fees certified for the term, quarter, or semester, not to exceed the highest amount of fees that could be charged in any term.

One commenter suggested allowing schools to certify the actual amount of tuition and fees charged minus any applicable military tuition assistance (TA) without requiring additional paperwork from the individual student. We make no changes based on this comment. Currently, VA requires that the student submit the TA form to VA prior to the issuance of a (top-up) payment. This form is necessary to determine the appropriate amount of tuition and fees VA will pay. Schools may submit the top-up form for the individual; however, VA should have the form on file and use it to make the determination of how much payment is due. Requiring certifying officials to make determinations on the amount of top-up payment an individual is due would add an additional step in the process that already exists and create an unnecessary burden on the schools. The TA form already provides VA with all of the information needed to determine the appropriate payment.

We received one comment requesting that the maximum rate for tuition and fees fluctuate during the academic year whenever the State makes changes in the tuition and/or fees rates after the academic year begins. We make no changes based on this comment other than clarifying that the maximum amounts payable for tuition and fees, as published, will be effective for each term, quarter, or semester that begins during the academic year. The State approving agency of jurisdiction will determine each State's highest in-State amounts payable for tuition per credit hour and for fees each term during an academic year. VA will publish the maximum amounts payable for tuition and fees on the GI Bill Web site at *http://www.gibill.va.gov* and in the **Federal Register** by August 1st of each year to allow institutions of higher learning and students to take this information into consideration when making relevant decisions. If VA were to change these figures each time an institution of higher learning or a State changed the amount of tuition or fees it charged, it could adversely affect the students if the amount was decreased and could adversely affect institutions of higher learning participating in the Yellow Ribbon Program if the amount increased.

Book Stipend

One commenter recommended VA issue promissory notes for the book stipends. We make no changes based on this comment. Book stipends are paid directly to the individual. VA sees no benefit in issuing a promissory note for books instead of issuing the book stipend payment directly to the individual.

Several commenters expressed concern about the method of payment for the book stipend. Four of these commenters asked how the summer term or mini-terms would impact the payment, especially since many students do not attend the summer sessions. Two commenters suggested that VA redefine academic year so that individuals could receive the full book stipend and two commenters requested the method of calculating the book stipend be clarified. Based on these comments, we clarified the method VA will use to determine how the book stipend payment is calculated. A book stipend of up to $1,000 is available to veterans (and transferees). Section 3313(c)(1)(B)(ii) of title 38, U.S.C., provides a formula for determining the amount of the book stipend payable each academic year. The formula instructs VA to pay a portion of the book stipend equal to the amount determined by multiplying $1,000 by the fraction of the academic year that the term, quarter, or semester represents. We choose to divide the academic year by 24 credit hours (the minimum number of credit hours generally considered to be full-time for an undergraduate in an academic year). Using this calculation, an individual eligible for 100 percent of the amounts payable under the Post-9/11 GI Bill who is pursuing training at more than one-half-time will receive $41.67 for each credit hour certified up to 24 credit hours in an academic year.

Monthly Housing Allowance

Several comments were received agreeing with VA's interpretation of the statute with regard to how distance learning courses affect eligibility for the monthly housing allowance (MHA); however, many other commenters expressed concern that the MHA is not available for additional categories of individuals. While one commenter supported prohibiting individuals from receiving the MHA if they are pursuing programs of education entirely by distance learning because of the potential for abuse, six commenters requested that the MHA be available to individuals pursuing a program of education entirely by distance learning. One of the commenters in favor of the MHA for distance learners also recommended that it be paid to these students based on the ZIP code of the student's address instead of the school's ZIP code as is done for students taking in-residence courses. Other commenters requested clarification on how partial pursuit of distance learning impacts the receipt of the MHA. Section 3313(c) of title 38, U.S.C., prohibits an individual from receiving the MHA if the individual is pursuing a program of education offered by distance learning. While we have interpreted this as broadly as possible to include individuals taking even one course in-residence as eligible to receive the MHA (if all other requirements are met), VA would be in violation of the statute if we allowed individuals pursuing a program of education entirely by distance learning to receive the MHA. Additionally, another commenter requested that VA define a qualifier for ''a single resident course.'' The commenter indicated that distance learning institutions may begin creating one-credit courses or one-half credit courses just to meet the residency requirement. It was suggested that VA set a minimum unit or percentage of courses that must be pursued in residence in order for individuals to qualify for the MHA. While VA notes the concern of the commenter, we disagree that institutions will create frivolous courses solely for the purpose of qualifying their students for the MHA. Further, many of the individuals enrolled in distance learning courses are unable to attend school in the traditional classroom setting due to other life circumstances. However, VA may only pay educational assistance under the Post-9/11 GI Bill for an approved program of education. Any courses pursued must be necessary for the attainment of the individual's identified objective. If the course has not been approved for pursuit of an approved program of education by the State approving agency or the course is not required for an individual's objective, VA will not be able to provide educational assistance for such course or include any credit for such course when determining eligibility for the MHA.

One commenter recommended allowing veterans to receive the MHA when training at more than one-half time but less than three-quarter time. We are retaining the wording contained in the proposed regulation that will permit individuals who are training at greater than one-half time to receive the MHA if all other criteria are met. Any

individual who is not on active duty, who is enrolled in at least one in-residence course, and who is pursuing a program of education with a rate of pursuit greater than 50 percent, will receive the housing allowance.

Two commenters recommended providing a monthly housing allowance to individuals attending foreign schools using the DoD's overseas housing allowance (OHA) rates for the locale where the individual is residing, rather than the average of the monthly housing allowances payable in the United States. One commenter also requested that we clarify how the ''average'' will be determined. We considered these comments, but make no substantive changes in the final rule other than to clarify that we will use the unweighted arithmetic mean to determine the average monthly housing allowance payable. DoD adjusts the basic allowance for housing (BAH) rates effective the first of January each year. The OHA rates are reviewed, and are subject to change, every 6 months. To maintain consistency in applying the MHA rate changes, VA will continue to use the national average to determine the maximum MHA payable for students attending foreign institutions.

We received one comment suggesting VA use the rate of pursuit to adjust the amount of MHA an individual will receive. The statute does not require that we limit the housing allowance based on rate of pursuit. We are only directed to limit it based on the individual's eligibility percentage level. We have decided not to unnecessarily limit the housing allowance and will pay individuals according to the direction provided in 38 U.S.C. 3313(c).

One commenter recommended the determination of eligibility for the MHA be established annually based on the individual's program rather than basing it on courses taken in a single term. We make no changes based on this comment. It would be extremely difficult for VA to determine the amount of MHA to pay on an annual basis. To do so would require that every school certify every student for all terms during the academic year. All institutions do not require students to register for every term (Fall, Winter, Spring, Summer) at the start of the school year. Having such a requirement would require students to register and schools to report actual tuition and fees for an entire year. Many schools cannot report actual tuition and fees until registration has ended. Determining receipt of MHA annually would burden the schools to make major changes in their registration and certification processes.

Kickers

We received four comments regarding payment of Post-9/11 GI Bill kickers. One commenter felt strongly that the Post-9/11 GI Bill kicker payments should not be denied to active-duty members, students whose rate of pursuit is one-half time or less, and students pursuing a program of education entirely by distance learning. One commenter requested an explanation as to how the MHA and the kicker are related. Two commenters requested that the final rule permit the kicker to be paid even if the individual is not entitled to receive the MHA. One of these commenters suggested increasing a ''zero'' dollar MHA payment by the amount of the Post-9/11 GI Bill kicker and the other commenter suggested paying the Post-9/11 GI Bill kicker in a lump sum payment in the same manner as the MGIB and Selected Reserve kickers are paid. We make no changes based on these comments. Section 3316(a)(1) of title 38, U.S.C., provides that DoD kickers will increase the monthly amount otherwise payable under 38 U.S.C. 3313(c)(1)(B). Section 3313(c)(1)(B) of title 38, U.S.C., is the section that authorizes the monthly housing allowance. Section 3313(a) of that title specifically indicates that the amounts specified in subsection (c) will be paid to individuals entitled to educational assistance under the Post-9/11 GI Bill who are pursuing an approved program of education, other than a program discussed in subsections (e) and (f). Subsection (e) details assistance payable for individuals on active duty, and subsection (f) details assistance payable for individuals pursuing training at one-half time or less. Neither subsection (e) nor (f) references nor authorizes a monthly housing allowance. VA is unable to increase the amount of an assistance payment that the individual is not eligible to receive. Additionally, section 3313(c)(1)(B)(i) specifically excludes the housing allowance for individuals pursuing a program of education offered entirely by distance learning. As a result of these statutory provisions, VA is unable to make Post-9/11 GI Bill kicker payments for a term, quarter, or semester in which an individual is on active duty, for an individual whose rate of pursuit is one-half time or less, or for an individual who is pursuing a program of education entirely by distance learning.

Another commenter inquired whether students will be required to fill out additional paperwork to receive MGIB kicker payments while receiving benefits under the Post-9/11 GI Bill. We make no change based on this comment because no additional paperwork is required. DoD will continue to notify VA of MGIB kicker eligibility. If an individual is eligible, VA will process the MGIB kicker payment without any additional paperwork from the individual.

Chapter 30 Refunds

One commenter requested clarification on how refunds of MGIB contributions will be handled, and asked if the refund will be automatic or if the individual will have to complete a form to request the refund. Another commenter asked when an individual will actually receive the refund. A third commenter recommended that a refund of the MGIB contributions be made even if the individual is not in receipt of the monthly housing allowance. We make no changes based on these comments. If the individual is in receipt of the housing allowance, VA will automatically refund the appropriate amount of the MGIB contributions when the individual exhausts his or her entitlement under the Post-9/11 GI Bill. Section 5003(c)(6) of Public Law 110–252 (122 Stat. 2377–2378) states that an individual may receive a refund of the basic contributions paid toward MGIB as an increase to the last monthly stipend payable to the individual under 38 U.S.C. 3313(c)(1)(B), *i.e.*, the monthly housing allowance. VA has no authority to ignore the statute and pay the refund when an individual is not eligible to receive the monthly housing allowance.

Two commenters addressed the additional $600 contribution (buy-up) that can be made towards increased educational assistance under MGIB. One commenter wanted to know if these contributions will also be refunded. The other commenter requested the final rule clearly state that the $600 is not refundable, if that is the case. Since the statute does not authorize a refund of the $600 contribution, we changed the wording in the final rule to clearly reflect that these contributions cannot be refunded.

Tutorial Assistance

One commenter requested clarification regarding whether an individual who received tutorial assistance under MGIB could also receive up to $1,200 for tutorial assistance under the Post-9/11 GI Bill. We make no changes based on this comment. Individuals who received tutorial assistance under MGIB may receive up to $1,200 for tutorial assistance under the Post-9/11 GI Bill. The $1,200 payable for tutorial assistance is the maximum amount that

can be paid for such assistance under each program.

Another commenter recommended removing the requirement that the individual be pursuing a program of education on a one-half time or more basis in order to be eligible for receipt of tutorial assistance. We make no changes based on this comment because the requirement is statutory. Section 3314(b)(1) of title 38, U.S.C., incorporates the provisions of 38 U.S.C. 3492, which requires that individuals be pursuing training at one-half time or more to receive tutorial assistance.

We received one comment indicating that there should not be a requirement that a student be failing a course before tutorial assistance can be authorized. We make no changes based on this comment. Section 3314(b)(2) of title 38, U.S.C., requires that the professor or teacher certify that tutorial assistance is essential to correct a deficiency of the student in a course that is required for satisfactory pursuit of the student's program of education. While this requirement is statutory, it should not be construed to mean tutorial assistance is only available if the individual is already failing the course. If the professor or teacher identifies that the individual has a justifiable need for tutorial assistance or the individual will not be able to continue pursuing his or her approved program of education, either in that course or as a prerequisite for other required courses, then VA would consider tutorial assistance to be warranted.

Yellow Ribbon Program

The proposed regulation provided that institutions of higher learning agree to the following to participate in the Yellow Ribbon Program—

- Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;
- Make contributions toward the program on behalf of the individual in the form of a waiver;
- State the maximum number of individuals for whom contributions will be made in any given academic year;
- Waive the same percentage of unmet established charges for all eligible individuals in any given academic year; and
- Commit to provide contributions for eligible individuals for the entire academic year specified in the agreement.

Several commenters requested the ability to set different contribution levels for one or more subelements (*e.g.*, School of Business, School of Liberal Arts) of the institution of higher learning. Another commenter requested the ability to set the contribution level by student status (*e.g.*, undergraduate, graduate, doctoral). The commenters noted that the subelements within the institution of higher learning have their own course schedule, tuition and fee structure, funding, and administrative requirements. Additionally, it was noted that tuition and fees for graduate students are generally higher than that of undergraduate students.

Five commenters requested that institutions of higher learning have the ability to set the maximum amount contributed in dollar amounts. The commenters noted that it would be easier for institutions of higher learning to budget for the program if the institutions had the ability to set a maximum dollar amount per student. They stated that using a percentage would require institutions to be more conservative in contributions.

We received several comments regarding the requirement that schools provide contributions in the form of a waiver. Some commenters requested that the term ''waiver'' be defined while other commenters requested that the ''waiver'' requirement be removed altogether. The commenters noted that some schools do not ''waive'' tuition and fees as a matter of policy. Other commenters asked if fee remission or a tuition discount qualified as a waiver.

We also received comments regarding continuous eligibility under the Yellow Ribbon Program. VA's Web site stated that institutions of higher learning must agree to continue Yellow Ribbon Program contributions for participating students as long as the institution continues to participate in the program and the student remains in good academic standing in accordance with the regularly prescribed standards of the institution. One commenter noted that it would be difficult for institutions to commit to provide contributions in subsequent years due to the novelty of the program, while two commenters suggested that VA state that contributions will continue throughout all subsequent years of continuous enrollment.

We agree, in general, with the above comments and, based on those comments, have substantially changed the requirements for participation in the Yellow Ribbon Program. VA has amended the Yellow Ribbon Program provisions to allow institutions of higher learning to set contribution levels by student status or subelement, state the maximum dollar amount that may be provided to each participant during the academic year, and provide contributions by direct grant, scholarship, or otherwise. We also clarified that institutions of higher learning must agree to provide Yellow Ribbon Program contributions to participating students as long as the institution participates in the program and the student remains in good academic standing in accordance with the regularly prescribed standards of the institution, and to provide the maximum amount of contributions payable for a participating individual each term he or she is enrolled as long as the amount paid will not exceed the maximum dollar amount payable for the academic year as specified in the agreement.

We received three comments requesting the ability to amend agreements during the academic year to increase the maximum number of students eligible to participate in the program, and we received one comment requesting a formal procedure to amend the agreement and the ability to negotiate the terms of the agreement prior to the beginning of the academic year. VA will continue to require that the initial agreement be binding for the entire academic year. While it is commendable that institutions of higher learning want to provide Yellow Ribbon Program contributions for additional individuals if money is available, the institutions are only required to report a maximum. The maximum number of participants listed in the agreement could be set high enough to cover all individuals that may apply. Additionally, VA will draft an agreement in accordance with statute that will be used in the administration of the Yellow Ribbon Program. For equality and consistency, VA chooses to reject the idea of allowing schools to individually negotiate the terms of the agreement. Having a standard agreement for all participating institutions will allow potential Yellow Ribbon Program participants to easily compare the program at different institutions.

We also received three comments expressing opposition to the first-come-first-served rule. Specifically, two commenters noted that requiring schools to provide contributions based on a first-come-first-served basis does not allow the institution to determine who is selected to participate and one commenter noted that several institutions offer financial aid on a need-basis only. VA included the first-come-first-served rule to ensure that there was a fair method of determining

who received Yellow Ribbon Program contributions at each participating institution. While VA notes that many schools provide financial aid on a need-basis only, the Yellow Ribbon Program is not a need-based program and should be available to any individual (and/or dependent of the individual) who has met the requirements to qualify for the program.

Elections

The proposed regulations stated that individuals eligible for educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 106a, 1606, or 1607 and who have met the service requirements to qualify for the Post-9/11 GI Bill must make an irrevocable election to receive educational assistance under the Post-9/11 GI Bill in lieu of one of the above-mentioned programs. One commenter noted that it is not fair for students to make an irrevocable election for a new benefit without access to complete and accurate information because it will permanently affect the course of their education. Another commenter suggested that VA allow individuals at least one opportunity to change their mind after making the irrevocable election or provide benefits counseling. Section 5003(c)(8) of Public Law 110–252 (122 Stat. 2375–2378) states that elections to receive educational assistance under the Post-9/11 GI Bill in lieu of other specific educational assistance programs are irrevocable. Accordingly, VA is unable to regulate exceptions to the provision. However, individuals may call VA's customer service number for assistance in making an informed decision before making an election. Additionally, VA offers vocational and educational counseling to eligible individuals upon request.

We also received comments requesting clarification on how the irrevocable eligibility elections would be made. VA is amending proposed § 21.9520(c) to specify that elections may be made by properly completing VA Form 22–1990, submitting a Post-9/11 GI Bill transfer-of-entitlement designation to DoD, or by submitting a written statement that includes identification information, the benefit being relinquished (if applicable), the effective date of the election, and a statement acknowledging that the individual understands that the election is irrevocable.

Three commenters requested that VA amend proposed § 21.9635(w) to clarify that an election to receive benefits under an existing educational assistance program on or after August 1, 2009, does not negate the opportunity to elect or use the Post-9/11 GI Bill at a later date. As proposed this provision stated that if an individual was eligible under more than one program and the individual elected to receive benefits under a previously existing program that VA would terminate assistance under the Post-9/11 GI Bill effective the date of the election. The elections referred to in § 21.9635(w) are not irrevocable eligibility elections. Individuals who are eligible for the Post-9/11 GI Bill and another educational assistance program at the same time may specify under which program they wish to receive payment. VA is amending the language of the section to clarify that individuals who are in receipt of benefits under the Post-9/11 GI Bill who choose to receive benefits under another program will receive benefits under such program effective the first day of the enrollment period during which the individual requested to receive benefits under the other program.

Academic Year

Five commenters suggested that VA amend the dates of the academic year to coincide with the Department of Education's award year that runs from July 1st of each calendar year through June 30th of the subsequent calendar year. VA set the beginning date of each academic year of August 1st to coincide with the effective date of the Post-9/11 GI Bill benefit for clarity and ease of administration. In determining the maximum amounts payable during each academic year, VA will obtain the highest tuition per credit hour and the highest fees that can be charged an undergraduate student at a public institution in each State from the State approving agency (SAA) of jurisdiction. Based on feedback from several SAAs, many institutions of higher learning do not set the rates for tuition and fees until June or July of each year. Moving the beginning date of the academic year to July would not provide VA adequate time to update systems, post the new maximums on the Web site, or timely process claims with the newly established maximums in July.

Rate of Pursuit

The proposed regulation states that the rate of pursuit will be the percentage determined by dividing the number of course hours an individual is enrolled in by the number of course hours considered to be full-time at the institution of higher learning. Additionally, in proposed § 21.9750, VA defined full-time pursuit to equal 14 credit hours unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition and are considered full-time for other administrative purposes. We received comments requesting that VA define full-time enrollment as a minimum of 12 credit hours. VA is unable to consider a minimum of 12 credit hours as full-time training for all institutions. Section 3688(a)(4) of title 38, U.S.C., defines ''full-time'' as a minimum of 14 hours unless the institution certifies that all undergraduate students enrolled for at least 12, but less than 14, hours are considered full-time for other administrative purposes.

One commenter suggested that VA always consider traumatic brain injury (TBI) veterans to be training at full-time (a rate of pursuit of 100%) even when the training time (or rate of pursuit) does not equal full-time. The commenter noted that TBI veterans are sometimes unable to pursue a full course load and should not be penalized due to their disability. Unfortunately, there are no provisions in the statute that will allow VA to pay a different rate to a specific class of veterans.

Another commenter requested that VA pay educational assistance for courses that are not part of an individual's program of education. Section 3452 of title 38, U.S.C, defines program of education to include any curriculum or combination of unit courses or subjects pursued at an educational institution that is generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. VA will pay for refresher, remedial, and deficiency courses that are required for the attainment of an objective even though those courses will not be credited towards the objective. However, VA is unable to pay for courses that are not required for pursuit of the individual's identified objective.

Mitigating Circumstances

We received comments requesting clarification of when mitigating circumstances will be considered to exist and which mitigating circumstances will be accepted by VA. One commenter asked VA to include mental illness in the listing of acceptable mitigating circumstances. In this final rule, VA added a definition for mitigating circumstances that provides examples of situations that VA will consider acceptable. Additionally, we modified § 21.9635 to clarify that mitigating circumstances will always be considered to exist for the first reduction or withdrawal of less than seven hours. We also received a

comment requesting that we expand the consideration of existing mitigating circumstances to more than the first instance of reduction or withdrawal and increase the number of hours in the first instance of withdrawal from six credit hours to eight credit hours for which mitigating circumstances will automatically be considered to exist. Section 3680(a)(1) of title 38, U.S.C., limits the automatic consideration of existing mitigating circumstances to the first reduction or withdrawal of less than seven hours. The statute does not provide VA the authority to increase the number of times mitigating circumstances will be considered to exist or the number of hours for which mitigating circumstances will automatically be considered to exist. Nevertheless, there is no statutory limit on the number of times that VA may consider evidence of mitigating circumstances submitted by the eligible individual. Any time an individual reduces or withdraws from training after the drop-add period, or receives a non-punitive grade (regardless of the number of credit hours reduced or withdrawn), he or she may submit evidence of mitigating circumstances to VA for review. If the mitigating circumstances are acceptable, VA will pay educational assistance through the end of the month of the reduction or through the last date of attendance for withdrawals.

Appeals

Two commenters requested that we clarify the appeals process for eligible individuals in receipt of educational assistance under the Post-9/11 GI Bill. Specifically, one commenter requested that VA provide a formal process for appealing the denial of the rural relocation benefit. Decisions regarding eligibility and entitlement to educational assistance under the Post-9/11 GI Bill are subject to the provisions of 38 U.S.C. chapters 71 and 72. Specifically, individuals may appeal a decision regarding eligibility or entitlement to educational assistance under the Post-9/11 GI Bill to the Board of Veterans' Appeals in accordance with the provisions of 38 CFR Part 20. To clarify this, VA is adding new § 21.1034 to notify claimants of their appeal rights regarding decisions of eligibility and entitlement to educational assistance administered by VA. Another commenter requested that VA provide a formal process for appealing a decision of eligibility to increased educational assistance (''kicker''). VA notes in newly added § 21.1034 that eligibility for educational assistance under 10 U.S.C. 510 or 10 U.S.C. chapter 106a, 1606, or 1607, and supplemental or increased assistance under 10 U.S.C. 16131(i), 38 U.S.C. 3015(d), 3021, and 3316, may not be appealed to VA, because the decision of eligibility for educational assistance and supplemental or increased educational assistance (''kicker'') under those sections rests solely with the DoD. Accordingly, VA will direct claimants appealing eligibility to supplemental or increased educational assistance (''kicker'') under the Post-9/11 GI Bill to the DoD.

General Comments

One commenter requested that VA explain why a certifying official who is eligible for the Post-9/11 GI Bill will be barred from receiving benefits at the school for which he or she is authorized to submit enrollments. VA included this language in the proposed regulation to help reduce the possibility of receiving fraudulent enrollment certifications. However, after further review, VA has determined that certifying officials eligible for receipt of benefits under the Post-9/11 GI Bill will be eligible to receive benefits for training pursued at the institution of higher learning for which he or she is authorized to sign enrollment certifications. However, certifying officials will be prohibited from submitting their own enrollment certification to VA.

Another commenter asked VA to consider exempting programs specifically provided for veterans from the 85–15 rule. Section 3680A of title 38, U.S.C., instructs VA to disapprove enrollment in certain courses, including those courses where more than 85 percent of the students are receiving educational assistance under programs administered by VA. However, that section provides an exception for courses offered at institutions of higher learning where less than 35 percent of the students on campus are receiving educational assistance under a program administered by VA.

We received a comment regarding the method in which students will certify their enrollment as stated in proposed § 21.9730. Due to system limitations, individuals will not be able to certify attendance to VA on a monthly basis, similar to individuals in receipt of benefits under 38 U.S.C. chapter 30. As a result, we removed proposed § 21.9730 and all references to that section from the final rule. However, the inability to certify attendance monthly does not relieve the individual of the responsibility of notifying VA of a change in enrollment in accordance with § 21.9735.

We received a comment requesting that beneficiaries under the Post-9/11 GI Bill also be provided with five months of free entitlement for remedial classes, noting that beneficiaries under 38 U.S.C. chapter 35 are not charged entitlement for the first 5 months of pursuit of remedial training. Chapter 33 of title 38, U.S.C., does not include a provision that would allow VA to provide five months of remedial training with no entitlement charge as is available for chapter 35 beneficiaries under 38 U.S.C. 3533 who meet the requirements of 38 U.S.C. 3491(a). However, the statute does provide that individuals may receive reimbursement for one licensing or certification test, tutorial assistance, and the rural relocation benefit with no charge to entitlement.

One commenter requested that VA allow individuals to pursue multiple objectives. The term ''program of education'' is defined in 38 U.S.C. 3452(b) for the purposes of chapter 36. Section 3323(a) of title 38, U.S.C., directs VA to the administrative provisions listed in 38 U.S.C. 3034(a) that further direct us to specific provisions of 38 U.S.C. chapter 36. Based on the statutory definition of ''program of education'' VA may approve the pursuit of multiple objectives as long as they lead to a single career field. Institutions of higher learning may request approval of dual degrees with the State approving agency of jurisdiction if they can show that the objectives are complementary and will lead to a single career field.

Two commenters requested that VA publish the State maximums prior to August 1st of each calendar year. Due to the novelty of the program, we are unable to predict how far ahead of the academic year we will have access to the State maximums. Based on recently received information from several State approving agencies, many public institutions do not set their tuition and fees until June or July of each year. We published the State maximums for the 2008–2009 academic year on our Web site in February. We will publish the State maximums for upcoming academic years as early as possible, but not later than August 1st of each calendar year.

In proposed § 21.9625(h), VA indicated that individuals who qualify for an increase in the percentage of the maximum amount payable based on length of active duty service during a certified enrollment period would receive payment based on such increase the first day of the term, quarter, or semester during which he or she was enrolled following the date the individual became entitled to such increase. A commenter requested that VA consider allowing individuals who are not enrolled in quarter or semester

schools to receive an increased payment within 4 months of the date the individual became entitled to the increase. VA will continue to increase percentages effective the date of the award or the first day of the certified enrollment period during which the individual is enrolled following the date the individual became entitled to such increase. Payments for tuition, fees, and, if applicable, the Yellow Ribbon Program are issued as lump sums at the beginning of the certified enrollment period. Those payments are issued for the entire enrollment period certified to VA. Increasing payments mid-term could adversely affect schools participating in the Yellow Ribbon Program. If VA readjusts the individual's claim to pay additional assistance, the amount of Yellow Ribbon Program contributions that the school could legally provide may be reduced. In these situations, the school would be required to refund money back to VA. For consistency among all schools, VA chooses to continue authorizing payment of educational assistance at an increased percentage effective the first date of the award or the first day of the certified enrollment period following the effective date of the increased percentage.

One commenter asked VA to clarify how entitlement would be charged for an individual who was called to active duty for a short period of time. Section 21.9560(d)(4) of title 38, CFR, states that entitlement will not be charged to individuals who are called or ordered to active duty or a new assignment and who do not receive credit or lose training time for any portion of the enrollment period. If the institution of higher learning grants the individual a leave of absence and the student returns and completes the courses following the leave of absence with no loss of credit or training time, VA would not reduce or alter the training time.

Another commenter requested that VA reconsider applying the administrative provisions (of chapter 36) for existing educational assistance programs to the Post-9/11 GI Bill. Section 3323(a) of title 38, U.S.C., directs VA to apply the provisions listed in 38 U.S.C. 3034(a) in the administration of the Post-9/11 GI Bill. Section 3034(a) requires that VA use existing provisions of 38 U.S.C. chapters 34 and 36. The use of the existing structure is mandated by statute and can not be changed by regulation.

We received a comment requesting that we create a regulatory pilot program for educational assistance that will provide less oversight for institutions with graduation-rate track records in the top half of the institutions in the country. The commenter noted that the current provisions in place are necessary to protect veterans, but added that the provisions are cumbersome and unnecessary for successful institutions. The commenter specifically suggested that VA create a second set of less obtrusive rules for specific institutions. Chapter 36 of title 38, U.S.C., directs VA to work cooperatively with State approving agencies to approve programs of education for educational assistance. As a result, VA can not remove statutory oversight requirements by regulation.

A commenter suggested that VA clarify whether the conversion rate for foreign currency will be based on a rate determined at an exchange where currencies are traded or at a commercial bank. VA amended the final rule to clarify that the foreign exchange rates effective July 1st of each calendar year as published by the Federal Reserve will be used to convert foreign currency for enrollments certified for the following academic year (August 1st through July 31st).

Additional Changes

We received several comments requesting technical changes to increase the clarity and readability of the regulatory text. VA appreciates the comments and incorporated several of the suggested changes in the final rule. In addition to the numerous non-substantive technical changes that were made, VA is also amending the final rule to clarify that individuals making an irrevocable eligibility election to receive benefits under the Post-9/11 GI Bill may receive a retroactive payment of educational assistance under the program for training pursued not earlier than one year prior to the date the election request was received. However, the retroactive payment can never begin prior to August 1, 2009, or the date the individual qualified for educational assistance under the program. We are also revising the formula for determining the maximum amount of tuition and fees that can be paid for individuals pursuing training at a foreign institution each year based on the current in-State maximums rather than the in-State maximums for the previous academic year. Additionally, we are revising § 21.9750 to include the formulas that will be used to assess courses at institutions of higher learning that do not use credit hours.

Other Comments

VA received several comments suggesting support for, or proposal of, legislative changes to certain provisions of the Post-9/11 GI Bill. Our primary focus is on ensuring that all requirements are met and all systems are in place for issuing payments on August 1, 2009; therefore, at this time, VA cannot support any legislative changes that would interfere with our ability to achieve this objective. We will take each of these suggestions submitted during the comment period into consideration when developing future legislative proposals. We also received numerous comments regarding the implementation of the program itself. Some commenters asked when institutions would be able to certify enrollments, when institutions would receive funds, how payments would be delivered, when and how students will be notified of application procedures, and if schools will have access to an individual's certificate of eligibility. We also received comments expressing concern regarding how often enrollment information will be reported and what additional information will be required. VA is in the process of developing the procedures necessary to implement the Post-9/11 GI Bill in accordance with statutory and regulatory provisions. We will continue to update our Web site at *http://www.gibill.va.gov* as information becomes available regarding the procedures that will be used to administer the program. VA appreciates the eagerness of the institutions to assist VA in providing our nation's veterans with this well-deserved benefit. We also appreciate the support and patience of each of our stakeholders during this process.

Benefits Costs

The benefit costs for implementing this final rule are slightly higher than the cost of implementing the proposed rule based on the opinion of our General Counsel that members of the PHS and NOAA are eligible for educational assistance under the Post-9/11 GI Bill. We estimate that the addition of PHS and NOAA members will result in an additional 332 trainees per year at the cost of $2.1 million for FY 2009 and nearly $56.5 million over 10 years.

Paperwork Reduction Act

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''Act''). In the preamble of the proposed rule, we identified 5 existing information collections that would be used in the administration of the Post-9/11 GI Bill. VA subsequently determined that the ''Student Verification of Enrollment'' (OMB control number 2900–0465) will not be necessary for the administration of the

program. VA also identified additional existing information collections that are necessary for the administration of the program. VA will use these existing information collections with the following Office of Management and Budget (OMB) control numbers in the administration of the Post-9/11 GI Bill:

- 2900–0154—Application for VA Education Benefits
- 2900–0171—Tutorial Assistance
- 2900–0576—Correspondence Affirmation
- 2900–0657—Conflicting Interests Certification for Proprietary Schools
- 2900–0073—VA Enrollment Certification
- 2900–0074—Request for Change of Program or Place of Training
- 2900–0156—Notice of Change in Student Status
- 2900–0209—Work-Study
- 2900–0353—Certificate of Lessons Completed
- 2900–0695—Application for Reimbursement of Licensing or Certification Test Fees

Additionally, VA determined that this rule will require a new information collection to implement the provisions of 38 U.S.C. 3319 regarding the Yellow Ribbon Program. Section 3319 of title 38, U.S.C., and 38 CFR 21.9700 require VA to enter into an agreement with an institution of higher learning that wishes to participate in the Yellow Ribbon Program. The institution of higher learning must report the means by which contributions are made, the maximum amount of contributions that will be provided to any individual during the academic year, and the maximum number of individuals for which the institution of higher learning will provide contributions during the academic year. On November 3, 2008, VA notified the public that an emergency request for approval was submitted to OMB for collection of information under the Yellow Ribbon Program. VA did not receive any comments regarding the information collection during the comment period. OMB approved the use of the Yellow Ribbon Program Agreement on January 8, 2009, under control number 2900–0718.

In the preamble of the proposed rule, we also stated that the provisions in 38 CFR 21.9680(c) requiring individuals to submit a request for the rural relocation benefit in writing does not constitute a collection of information under the Act because VA anticipates that information will be collected from fewer than 10 persons annually.

OMB assigns a control number for each collection of information it approves. VA 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.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866 and Congressional Review Act

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a ''significant regulatory action'' requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of $100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This final rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of $100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Post-9/11 GI Bill was established to provide educational assistance to members of the Armed Forces who serve on active duty after September 10, 2001. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget. Eligible individuals may receive an educational assistance allowance for established charges not to exceed the highest amount charged full-time in-State undergraduate students by the most expensive public institution in the State where the student is enrolled (or the national average of the most expensive in-State public institutions for individuals training at a foreign institution not associated with an institution located inside the United States), a monthly housing allowance up to the monthly amount payable under section 403 of title 37, U.S.C., for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the institution is located, and a book stipend of up to $1,000 each academic year. Individuals may also qualify for a work-study allowance, tutorial assistance, reimbursement of a licensing or certification test, and a rural relocation benefit. Individuals eligible for 100 percent of the benefit may also receive additional funds under the Yellow Ribbon Program to cover established charges not otherwise covered under chapter 33.

The effective date of the chapter 33 program is August 1, 2009; therefore, full year benefit costs begin in FY 2010. VA estimates the benefit cost of the program will be $1.2 billion in FY 2009, approximately $28.1 billion through FY 2013, and $78.1 billion through FY 2018.

Due to the short length of time provided to implement this new benefit program and the lack of an existing payment system that will support the types of payments authorized under the new program, VA will utilize manual processing of claims in a preexisting system with limited functionality until an in-house Information Technology Systems (IT) solution can be developed. As a result, VA estimates discretionary costs of $78.8 million in FY 2009 and $452.6 million over 10 years for IT and minor construction needs, supplies,

equipment (including computers); increased rent; and salaries to support additional personnel. FY 2009 costs are offset by additional funding in the amount of $100 million dollars made available to VA in chapter 3 of title I of the Supplemental Appropriations Act, 2008.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this final rule will affect some small entities that are testing organizations or educational institutions, any economic impact on them will be minor because these functions are currently being carried out for other educational assistance programs. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.130, Post-9/11 Veterans Educational Assistance. The final rule also affects the Montgomery GI Bill—Selected Reserve (MGIB–SR) program and the Reserve Educational Assistance Program (REAP), for which there are no Catalog of Federal Domestic Assistance numbers.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 25, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 21 as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

■ 1. The authority citation for part 21, subpart B continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

■ 2. Amend § 21.1029 by:

■ a. In the introductory text, removing ''and L,'' and adding, in its place, ''L, and P,'';

■ b. Revising the authority citation at the end of paragraph (e).

The revision reads as follows:

§ 21.1029 Definitions.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

■ 3. Amend § 21.1030 by revising the authority citation at the end of paragraphs (a), (b) and (c) to read as follows:

§ 21.1030 Claims.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

§ 21.1031 [Amended]

■ 4. Amend § 21.1031(b)(1) introductory text by removing ''or L'' and adding, in its place, ''L, or P''.

§ 21.1032 [Amended]

■ 5. Amend § 21.1032(a)(1) introductory text by removing ''or L'' and adding, in its place, ''L, or P''.

■ 6. Revise § 21.1033(c) to read as follows:

§ 21.1033 Time limits.

* * * * *

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, § 21.7051, § 21.7551, or § 21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

* * * * *

■ 7. Add § 21.1034 to subpart B to read as follows:

§ 21.1034 Appeals.

A claimant may appeal a decision of eligibility or entitlement to educational assistance under title 38, U.S.C., to the Board of Veterans Appeals in accordance with the provisions of 38 CFR Part 20. A claimant may appeal a decision of entitlement to educational assistance under 10 U.S.C. 510 and 10 U.S.C. chapters 106a, 1606, and 1607 to the Board of Veterans Appeals in accordance with the provisions of 38 CFR Part 20. A claimant may not appeal a decision of eligibility under 10 U.S.C. 510 or 10 U.S.C. chapters 106a, 1606, or 1607 or for supplemental or increased educational assistance under 10 U.S.C. 16131(i) or 38 U.S.C. 3015(d), 3021, or 3316 to VA as the Department of Defense solely determines eligibility to supplemental and increased educational assistance under those sections.

(Authority: 38 U.S.C. 501(a), 7105, 7105A)

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

■ 8. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

■ 9. Amend § 21.3022 to read as follows:

§ 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must choose which

benefit he or she will receive for the particular period(s) of training during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(g) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note.);

(i) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note.); and

(j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

Subpart D—Administration of Educational Assistance Programs

■ 10. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

■ 11. Amend § 21.4005 by:

■ a. Removing ''chapter 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapter 30, 32, 33, 35, or 36''; removing ''chapters 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapters 30, 32, 33, 35, or 36''; removing ''chapter 30, 32, or 35'' and adding, in each place, ''chapter 30, 32, 33, or 35''.

■ b. Revising paragraph (a)(1)(ii) and (a)(2)(ii).

■ c. Revising the authority citation at the end of paragraphs (a) and (b).

■ d. Revising paragraph (e) heading.

The revisions read as follows:

§ 21.4005 Conflicting interests.

* * * * *

(a) * * *

(1) * * *

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(2) * * *

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

* * * * *

(e) *Notice to veterans, reservists, and eligible individuals.*

* * * * *

■ 12. Amend § 21.4006 by revising the authority citation at the end of paragraphs (a) introductory text, (a)(2), and (b) to read as follows:

§ 21.4006 False or misleading statements.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

* * * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

* * * * *

■ 13. Amend § 21.4008 by revising the authority citation at the end of paragraphs (a) and (b) to read as follows:

§ 21.4008 Prevention of overpayments.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

■ 14. Amend § 21.4009 by revising the authority citation at the end of paragraphs (b) through (j) to read as follows:

§ 21.4009 Waiver or recovery of overpayments.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

* * * * *

■ 15. Amend § 21.4020 by:

■ a. Revising paragraph (a)(4) and (5); and

■ b. Revising the authority citation at the end of paragraphs (a) and (b).

The revisions read as follows:

§ 21.4020 Two or more programs.

(a) * * *

(4) 38 U.S.C. chapters 30, 32, 33, 34, 35, and 36;

(5) 10 U.S.C. chapters 106a, 1606, and 1607;

* * * * *

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

* * * * *

■ 16. Revise § 21.4022 to read as follows:

§ 21.4022 Nonduplication—programs administered by VA.

A veteran, reservist, or eligible individual, who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this section, whether based on his or her own service or the service of another

person, cannot receive such benefits concurrently. The individual must choose under which program he or she will receive benefits for the particular period(s) during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. 33 (Post-9/11 GI Bill)

(e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(h) 10 U.S.C. 106a (Educational Assistance Test Program);

(i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(j) The Hostage Relief Act of 1980 (Pub. L. 96–449), 5 U.S.C. 5661 note);

(k) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

■ 17. Amend § 21.4145 by:

■ a. In paragraph (a)(1), removing ''chapter 30 or 32'' and adding, in its place, ''chapter 30, 32 or 33''.

■ b. Revising the authority citation at the end of paragraphs (a), (c), (d), (e), (f), and (h).

■ c. Adding an authority citation at the end of paragraph (b).

■ d. Adding an authority citation at the end of paragraph (g).

The revisions and additions read as follows:

§ 21.4145 Work study allowance.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

* * * * *

§ 21.4146 [Amended]

■ 18. Amend § 21.4146, paragraph (a), by removing ''chapters 30, 32, 35, or 36'' and adding, in its place, ''chapters 30, 32, 33, 35, or 36''.

■ 19. Amend § 21.4153 by revising paragraph (c)(4)(i) and the authority citation following paragraph (c)(4)(i) to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) * * *

(4) * * *

(i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

* * * * *

§ 21.4200 [Amended]

■ 20. Amend § 21.4200 introductory text, by removing ''subparts C, F, G, H, K, and L'' and adding, in its place, ''subparts C, G, H, K, L, and P''.

■ 21. Amend § 21.4201 by:

■ a. In paragraph (a), removing ''the Department of Veterans Affairs pursuant to Title 38 U.S.C.'' and adding, in its place, ''VA under title 38, U.S.C., or under title10, U.S.C.''.

■ b. In paragraph (c)(4), removing ''chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 1606, title 10, United States Code'' and adding, in its place, ''38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606''.

■ c. In paragraph (e)(2) introductory text, removing ''United States Code or under chapter 1606, title 10, United States Code'' and adding, in its place, ''U.S.C., or under title 10, U.S.C.''.

■ d. In paragraph (f)(1)(ii), removing ''chapters 30, 31, 32, 34, 35, or 36, title 38, U.S.C., or chapter 1606, title 10 U.S.C.'' and by adding, in its place, ''38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606''.

■ e. In paragraph (g)(2) introductory text, removing ''either under Chapter 1606, Title 10, U.S.C., or under Chapters 30, 32, 34, or 36, Title 38 U.S.C.'' and adding, in its place, ''under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36''.

■ f. Revising the authority citation at the end of paragraphs (a), (c)(4) introductory text, (c)(4)(ii), (d), (e)(2)(i), (e)(2)(iv), (e)(3), (f)(1) introductory text, (f)(1)(ii), (f)(2), (g)(2) introductory text, (g)(2)(ii), (g)(5), and (h).

The revisions read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(c) * * *

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) * * *

(2) * * *

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) * * *

(1) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) * * *
(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(5) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

■ 22. Amend § 21.4206 by:
■ a. In the introductory text and in paragraph (a), removing ''chapter 30, 32, 34, 35 or 36'' and adding, in its place, ''chapter 30, 32, 33, 35 or 36''.
■ b. In paragraph (e)(1), removing ''chapters 30, 32, 34, 35 and 36 of title 38 U.S.C.'' and adding, in its place, ''chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.''.
■ c. Revising the authority citation at the end of paragraphs (a) through (d).
■ d. Removing the authority citation at the end of paragraph (e)(1) and by revising the authority citation at the end of the paragraph (e).
■ e. Adding an information collection approval parenthetical at the end of the section.

The revisions and addition read as follows:

§ 21.4206 Reporting fee.

* * * * *

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073)

■ 23. Amend § 21.4209 by:
■ a. In paragraph (a)(1), removing ''chapter 30, 32, 34, 35, or 36'' and adding, in its place, ''chapter 30, 32, 33, 35, or 36''.
■ b. In paragraph (c), removing ''veterans under 38 U.S.C. chapter 30 or 32,'' and adding, in its place, ''veterans under 38 U.S.C. chapter 30, 32, or 33,''.
■ c. Revising the authority citation at the end of paragraphs (a) through (c), and (f).

The revisions read as follows:

§ 21.4209 Examination of records.

(a) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(b) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

* * * * *

■ 24. Amend § 21.4210 by:
■ a. Revising the section heading and paragraph (a)(1).
■ b. In paragraph (b)(1)(i), removing ''chapter 30, 32, 34, 35, or, 36'' and adding, in its place, ''chapter 30, 32, 33, 35, or 36''.
■ c. In paragraph (d)(2)(ii), removing ''chapters 30, 32, 34, 35, and 36'' and adding, in its place, ''chapters 30, 32, 33, 35, and 36''.
■ d. Revising paragraph (d)(4)(ii).
■ e. Revising the authority citation at the end of paragraphs (a), (b)(1)(ii), (c), (d), (e)(2), and (f) through (i).

The revisions read as follows:

§ 21.4210 Suspension and discontinuance of educational assistance payments, and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. VA may pay educational assistance under 38 U.S.C. chapter 33 to an eligible individual or, as appropriate, to the individual's institution of higher learning on his or her behalf, for the individual's pursuit of a course or program of education if the course or program of education is offered by an institution of higher learning and approved under 38 U.S.C. chapter 30 in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36, or if an individual is entitled to be paid educational assistance to meet all or a portion of the institution of higher learning's established charges that the military department concerned has not covered by tuition assistance under 10 U.S.C. 2007(a) or (c). Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) * * *
(1) * * *
(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(d) * * *
(4) * * *

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance

authorized to such individuals under §§ 21.4138(a), 21.7140(a), 21.7640(d), or 21.9680; or

* * * * *

(Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S. C. 3034(a), 3241, 3323(a), 3683(b))

■ 25. Amend § 21.4211 by:

■ a. Removing ''chapter 30, 32, 34, 35, or 36'' each place it appears and adding, in each place, ''chapter 30, 32, 33, 35, or 36''.

■ b. Revising the authority citation at the end of paragraphs (a) through (e).

The revisions read as follows:

§ 21.4211 Composition, jurisdiction, and duties of the Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

■ 26. Amend § 21.4212 by revising the authority citation at the end of the section to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 27. Amend § 21.4213 by revising the authority citation at the end of the section to read as follows:

§ 21.4213 Notices of hearing by Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 28. Amend § 21.4214 by revising the authority citation for paragraphs (a) through (p) to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(k) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(l) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(m) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(n) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(o) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(p) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 29. Amend § 21.4215 by revising the authority citation for paragraphs (a) through (e) to read as follows:

§ 21.4215 Decision of Director of VA Regional Processing Office of jurisdiction.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 30. Amend § 21.4216 by revising the authority citation for paragraphs (a) and (c) to read as follows:

§ 21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 31. Amend § 21.4233 by revising the authority citation at the end of paragraph (e) to read as follows:

§ 21.4233 Combination.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

■ 32. Amend § 21.4234 by:

■ a. Removing ''veteran or eligible person'' each time it appears, and adding, in its place, ''veteran, reservist, or eligible person''.

■ b. Revising paragraph (c).

■ c. In paragraph (d)(1)(i), removing ''veteran or eligible spouse or surviving spouse'' and adding, in its place, ''veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35''.

■ d. In paragraph (d)(1)(iii) and (d)(2)(iii), removing ''child'', and adding, in each place, ''child receiving

educational assistance under 38 U.S.C. chapter 35''.

■ e. Revising the authority citation at the end of paragraphs (a)(2)(iv), (a)(2)(v), (b), (c), (d)(3), (d)(4), and (e).

The revisions read as follows:

§ 21.4234 Change of program.

(a) * * *

(2) * * *

(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(v) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) Optional change of program. A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(d) * * *

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(e) * * *

(Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

* * * * *

■ 33. Amend § 21.4236 by revising the authority citation at the end of paragraphs (b), (c), and (d) to read as follows:

§ 21.4236 Tutorial assistance.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

■ 34. Amend § 21.4250 by:

■ a. In paragraph (c)(2)(ii), removing ''Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36'' and adding, in its place, ''chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36''.

■ b. In paragraph (c)(2)(iii), removing ''chapter 30, 32, or 35'' and adding, in its place, ''chapter 30, 32, 33, or 35''.

■ c. Revising the authority citation at the end of paragraphs (a) and (c).

The revisions read as follows:

§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) * * *

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

* * * * *

■ 35. Amend § 21.4252 by revising the authority citation at the end of paragraph (c) to read as follows:

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 36. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 37. Amend § 21.5022 by revising paragraphs (a) and (b)(1)(i) through (b)(1)(vii), adding paragraphs (b)(1)(viii) and (b)(1)(ix), and revising the authority citation at the end of the section to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 38 U.S.C. 3033(a), 3322(a))

(b) * * *

(1) * * *

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill-Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

* * * * *

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 38. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 39. Amend § 21.7143 by revising paragraphs (a) and (b) to read as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* (1) Except for receipt of a Montgomery GI

Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and—

(i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(b) If an individual is eligible for benefits under 38 U.S.C. chapter 30 and one or more of the programs listed in paragraphs (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 40. The authority citation for part 21, subpart L is amended to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

■ 41. Amend § 21.7642 by revising paragraphs (a) and (b) to read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law—

(1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);

(3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(4) 38 U.S.C. 33 (Post-9/11 GI Bill);

(5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(7) 10 U.S.C. 106a (Educational Assistance Test Program);

(8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(9) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

(b) When paragraph (a) of this section applies, the reservist must choose which benefit he or she wishes to receive. The reservist may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The reservist may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

* * * * *

■ 42. Add and reserve subparts N and O.

■ 43. Add new subpart P to read as follows:

Subpart P—Post-9/11 GI Bill

Sec.

21.9500 Introduction.

Definitions

21.9505 Definitions.

Claims and Applications

21.9510 Claims, VA's duty to assist, and time limits.

Eligibility

21.9520 Basic eligibility.
21.9525 Eligibility for increased and supplemental educational assistance.
21.9530 Eligibility time limit.
21.9535 Extended period of eligibility.

Entitlement

21.9550 Entitlement.
21.9555 Entitlement to supplemental educational assistance.
21.9560 Entitlement charges.

Transfer of Entitlement to Basic Educational Assistance to Dependents

21.9570 Transfer of entitlement.

Counseling

21.9580 Counseling
21.9585 Travel Expenses.

Approved Programs of Education and Courses

21.9590 Approved programs of education and courses.
21.9600 Overcharges.

Payments—Educational Assistance

21.9620 Educational assistance.
21.9625 Beginning dates.
21.9630 Suspension or discontinuance of payments.
21.9635 Discontinuance dates.
21.9640 Rates of payment of educational assistance.
21.9645 Refund of basic contribution to chapter 30.
21.9650 Increase in educational assistance.
21.9655 Rates of supplemental educational assistance.
21.9660 Rural relocation benefit.
21.9665 Reimbursement for licensing or certification tests.
21.9670 Work-study allowance.
21.9675 Conditions that result in reduced rates or no payment.
21.9680 Certifications and release of payments.
21.9685 Tutorial Assistance.
21.9690 Nonduplication of educational assistance.
21.9695 Overpayments.
21.9700 Yellow Ribbon Program.

Pursuit of Courses

21.9710 Pursuit.
21.9715 Advance payment certification.
21.9720 Certification of enrollment.
21.9725 Progress and conduct.
21.9735 Other required reports.
21.9740 False, late, or missing reports.
21.9745 Reporting fee.

Course Assessment

21.9750 Course measurement.

Approval of Programs of Education

21.9765 Program of education approval.

Administrative

21.9770 Administrative.

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

Subpart P—Post-9/11 GI Bill

§ 21.9500 Introduction.

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009.

(Authority: Pub. L. 110–252, 122 Stat. 2357, 2378)

Definitions

§ 21.9505 Definitions.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200).

Academic year means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

Active duty means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include—

(1) Full-time National Guard Duty performed under 32 U.S.C. orders;

(2) Any period during which the individual—

(i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;

(ii) Served as a cadet or midshipmen at one of the service academies; or

(iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(3) A period of service—

(i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);

(ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;

(iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(4) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

Advance payment means an amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Course means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3323(c))

Distance learning means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7).

(Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

Educational assistance means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3313)

Enrollment period means a term, quarter, or semester during which the institution of higher learning offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Entry level and skill training means—

(1) Basic Combat Training and Advanced Individual Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training (''A'' School) for members of the Navy;

(3) Basic Military Training and Technical Training for members of the Air Force;

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

Established charges means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay.

(Authority: 38 U.S.C. 3313(h))

Fees means any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.

(Authority: 38 U.S.C. 501(a), 3323(c))

Institution of higher learning (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

Interval means a period of time between regularly scheduled individual terms, semesters, or quarters.

(Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

Lump sum payment means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

Mitigating circumstances means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

(1) An illness or mental illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable change in the individual's conditions of employment;

(4) An unavoidable geographical transfer resulting from the individual's employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the educational institution;

(7) Unanticipated active duty for training; or

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

Program of education means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified

educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

Pursuit means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of Title 38, U.S.C., and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Rate of pursuit means the measurement obtained by dividing the number of credit hours (or the equivalent credit hours as determined in § 21.9750) an individual is enrolled in, including credit hours (or the equivalent) applied to refresher, remedial, and deficiency courses, by the number of credit hours (or the equivalent credit hours) considered to be full-time training at the institution of higher learning. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(Authority: 38 U.S.C. 3323, 3680)

Transferor means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

Claims and Applications

§ 21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits.

(Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

Eligibility

§ 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she—

(a) Serves a minimum of 90 aggregate days excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, see § 21.9640(a)) and, after completion of such service,—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for—

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military department concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged under other than dishonorable conditions due to a service-connected disability; or

(c)(1) After meeting the minimum service requirements in paragraph (a) or (b) of this section—

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards such educational assistance under 38 U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22–1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following—

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (*e.g.*, ''I elect to receive benefits under the Post-9/11–GI Bill in lieu of benefits under the Montgomery GI Bill—Active Duty (chapter 30) program.'');

(iii) The date the individual wants the election to be effective (*e.g.*, ''I want this election to take effect on August 1, 2009.''). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (*e.g.*, ''I understand that my election is irrevocable and may not be changed.'').

(Authority: 38 U.S.C. 3311; Pub. L. 110–252, Stat. 2375–2376)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0154.)

§ 21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of

educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only.* Supplemental educational assistance may be offered to an individual who serves 5 or more consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and—

(i) Continues on active duty without a break;

(ii) Is discharged from service with an honorable discharge;

(iii) Is placed on the retired list;

(iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(v) Is placed on the temporary disability retired list; or

(vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service.* (i) Supplemental educational assistance may be offered to an individual who—

(A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;

(B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service—

(*1*) Is discharged from service with an honorable discharge;

(*2*) Is placed on the retired list;

(*3*) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;

(*4*) Is placed on the temporary disability retired list;

(*5*) Continues on active duty; or

(*6*) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual—

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) of this section.

(iii) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Secretary of Defense will be binding upon VA.

(Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

§ 21.9530 Eligibility time limit.

(a) Except as provided in paragraphs (b) through (e) of this section, an individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least—

(1) 90 continuous days; or

(2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in § 21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action.

(Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The transferor's ending date as determined under this section;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following—

(i) The date 15 years from the transferor's date of death;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.* (1) The ending date of the child's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved]

(Authority: 38 U.S.C. 3319)

§ 21.9535 Extended period of eligibility.

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530 (except for paragraphs (d) and (e)) provided—

(i) The individual applies for the extension within the time specified in § 21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows—

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the

individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in § 21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The date the individual's training became medically feasible; or

(B) The last date of the individual's original period of eligibility as determined in § 21.9530.

(b) *Forcibly detained extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530, equal to the period of time the individual—

(i) Was captured and forcibly detained by a foreign government or power, and

(ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved]

(Authority: 38 U.S.C. 3321)

Entitlement

§ 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C. chapter 30, had not used any entitlement under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

§ 21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will—

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023, 3316)

§ 21.9560 Entitlement charges.

(a) *Overview.* Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge.* (1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit.* If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(ii) *Less than full-time pursuit.* If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will—

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge—

(1) That would be made under the provisions of § 21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of § 21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For an approved licensing or certification test as provided under § 21.9665; or

(Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check or received a direct deposit for educational assistance provided under this chapter for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

Transfer of Entitlement to Basic Educational Assistance to Dependents

§ 21.9570 Transfer of entitlement.

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions.

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

(i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.*
(i) Section 21.9550—Entitlement;
(ii) Section 21.9555—Entitlement to supplemental educational assistance;
(iii) Section 21.9560—Entitlement charges.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.*
(i) Section 21.9580—Counseling;
(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.*
(i) Section 21.9590—Approved programs of education and courses;
(ii) Section 21.9600—Overcharges.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.*
(i) Section 21.9620—Educational assistance;
(ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
(iii) Section 21.9630—Suspension or discontinuance of payments;
(iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
(v) Section 21.9640—Rates of payment of educational assistance;
(vi) Section 21.9650—Increase in educational assistance;
(vii) Section 21.9655—Rates of supplemental educational assistance;
(viii) Section 21.9660—Rural relocation benefit;
(ix) Section 21.9665—Reimbursement for licensing or certification tests;
(x) Section 21.9670—Work-study allowance;
(xi) Section 21.9675—Conditions that result in reduced rates or no payment;
(xii) Section 21.9680—Certifications and release of payments;
(xiii) Section 21.9685—Tutorial assistance;
(xiv) Section 21.9690—Nonduplication of educational assistance;
(xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and

(Authority: 38 U.S.C. 3319)

(xvi) Section 21.9700—Yellow Ribbon Program.

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.*
(i) Section 21.9710—Pursuit;
(ii) Section 21.9715—Advance payment certification;
(iii) Section 21.9720—Certification of enrollment;
(iv) Section 21.9725—Progress and conduct;
(v) Section 21.9735—Other required reports;
(vi) Section 21.9740—False, late, or missing reports; and
(vii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.* Section 21.9750—Course measurement.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* Section 21.9770—Administrative.

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.*
(1) An individual transferring entitlement under this section may transfer entitlement to:
(i) The individual's spouse;
(ii) One or more of the individual's children; or
(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.
(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter at the time of transfer.
(3) A child must meet the definition of child in § 3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in § 21.9570(d)(1) before the child attains the age of 23.
(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her military department to transfer entitlement may do so at any time while serving as a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.*
(1) An individual transferring entitlement under this section must:
(i) Designate the dependent or dependents to whom such entitlement is being transferred;
(ii) Designate the number of months of entitlement to be transferred to each dependent; and
(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.
(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable.*
(1) The maximum amount of entitlement a transferor may transfer is the lesser of:
(i) Thirty-six months of his or her entitlement; or
(ii) The maximum amount authorized by the Secretary of the military department concerned; or
(iii) The amount of entitlement he or she has available at the time of transfer.
(2) The transferor may transfer up to the maximum amount of transferable entitlement:
(i) To one dependent; or
(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.*
(1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.
(2) The revocation will be effective the later of—
(i) The date VA receives the notice of revocation; or
(ii) The date the military department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.*
(1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.
(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the military department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9640 (and §§ 21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in § 21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under § 21.9640 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of established charges the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of established charges to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under § 21.9570; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless—

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the military concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for—

(A) A disability; or

(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (l)(1)(ii) of this section.

(Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

Counseling

§ 21.9580 Counseling.

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of § 21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

§ 21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required.

(Authority: 38 U.S.C. 111, 3323(c))

Approved Programs of Education and Courses

§ 21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9505;

(2) Except for a program consisting of a licensing or certification test, the program has an educational, vocational, or professional objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30, or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110–252, 122 Stat. 2377)

§ 21.9600 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges an individual, or receives from an individual, an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

Payments—Educational Assistance

§ 21.9620 Educational assistance.

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in § 21.9640. The maximum amounts of tuition and fees payable for the upcoming academic year under 38 U.S.C. chapter 33 will be published in the ''Notices'' section of the **Federal Register** by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at *http://www.gibill.va.gov* or by calling VA's customer service department toll-free at 1–888–442–4551. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

§ 21.9625 Beginning dates.

VA will determine the beginning date of an award or increased award of educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.* (i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the program of education; or

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

(Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance (as defined in § 21.7020(b)(36)).

(Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C.3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under § 21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or

(2) The date the individual is released from the penal institution or correctional facility.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase (''kicker'') based on critical skills or specialty.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase ('kicker'') will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first date on which the eligible individual is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.57 of this chapter; or

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified

period of enrollment, VA will begin paying—

(1) Tuition and fees using the provisions of § 21.9640(b) or (c), whichever is applicable, effective the first day of the enrollment period following the enrollment period during which the individual was discharged;

(2) The monthly housing allowance beginning the 1st day of the month following the date the individual was discharged; and

(3) The book stipend beginning the first day of the enrollment period following the enrollment period during which the individual was discharged.

(l) *Election to receive benefits under 38 U.S.C. chapter 33.* If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following—

(1) August 1, 2009;

(2) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(3) One year before the date the valid election request was received; or

(4) The effective date of the election as requested by the claimant.

§ 21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course or courses dropped during an institution of higher learning's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraphs (d)(1)(i) or (d)(1)(ii) apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the

requirements of § 21.9680(b)(5) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of—

(i) The last date permitted by the IHL to complete the course;

(ii) The date the IHL permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments, as provided in § 21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.*

(1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9675(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal (other than one administered by VA), State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility; or

(iii) The beginning date of the award as determined by § 21.9625.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Reduction or termination due to active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the ''book stipend'', the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

(Authority: 38 U.S.C. 3313(e))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an institution of higher learning on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase (''kicker'') for Selected Reserve service.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase (''kicker'').

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under this chapter who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980, may choose to receive educational assistance under another program. VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a

transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9570.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9570.

(Authority: 38 U.S.C. 3319)

(bb) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (aa) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

§ 21.9640 Rates of payment of educational assistance.

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in paragraph (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Percentage of maximum amounts payable
At least 36 months [1]	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months [1]	90
At least 24 months, but less than 30 months [1]	80 [3]
At least 18 months, but less than 24 months [2]	70 [3]
At least 12 months, but less than 18 months [2]	60
At least 6 months, but less than 12 months [2]	50
At least 90 days, but less than 6 months [2]	40

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.
[3] If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

(Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than one-half time.* An individual, other than one on active duty, who is pursuing a program of education at more than one-half time (at a rate of pursuit greater than 50 percent) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(1)(i)(A) and the lower amount of fees as determined in paragraph (b)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning; or

(*2*) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning; or

(*2*) The maximum amount of fees regularly charged full-time undergraduate in-State students in a term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees in a term, quarter, or semester in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (b)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours

(or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(2)(i)(A) and the lower amount of fees as determined in paragraph (b)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph ((b)(2)(i)(A) and in paragraph (b)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, unweighted arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, unweighted arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (b)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the average (*i.e.*, unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 residing in the United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(c) *Maximum amounts payable for training at one-half time or less.* An individual, other than one on active duty, who is pursuing a program of education at one-half time or less (at a rate of pursuit of 50 percent or less) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(1)(i)(A) and the lower amount of fees as determined in paragraph (c)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(*2*) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(*2*) The maximum amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees per term, quarter or semester, in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (c)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The

lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(2)(i)(A) and the lower amount of fees as determined in paragraph (c)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph (c)(2)(i)(A) and in paragraph (c)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (c)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24); multiplied by

(B) The number of credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(1) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment.

(3) The lesser amount of paragraph (d)(1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts of tuition and fees payable for the upcoming academic year in the ''Notices'' section of the **Federal Register** and on the GI Bill Web site at *http:/www.gibill.va.gov* by the first of August of each calendar year. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3323(c))

§ 21.9645 Refund of basic contribution to chapter 30.

(a)(1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount contributions paid under 38 U.S.C. 3011(b) or 3012(c), up to $1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009—

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g).

(2) Individuals are not entitled to a refund of any portion of additional contributions, of up to $600, paid towards educational assistance under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.7136(h).

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in § 21.7042(g) multiplied by the fraction with—

(1) A numerator equal to—

(i) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred

entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(ii) 36 for individuals making contributions in accordance with § 21.9645(a)(iii); and

(2) A denominator equal to 36.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

(Authority: Pub. L. 110–252, Stat. 2377–2378)

§ 21.9650 Increase in educational assistance.

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase (''kicker'') amount.* (1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $50.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual's rate of pursuit of training.

(2) The increase (''kicker'') amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) *Chapter 30 increase (''kicker'') amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.9520(c) and, on the date of such election, the individual is also entitled to an increase (''kicker'') of the amount of educational assistance under 38 U.S.C. 3015(d), the individual remains entitled to that increase under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $50.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3015(d); Pub. L. 110–252, Stat. 2378)

(c) *Chapter 1606 increase (''kicker'') amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 10 U.S.C. chapter 1606 in accordance with the provisions of § 21.9520(c) and, on the date of such election, the individual is also entitled to an increase (''kicker'') of the amount of educational assistance under 10 U.S.C. 16131(i), the individual remains entitled to that increase (''kicker'') under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $350.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 10 U.S.C. 16131(i); Pub. L. 110–252, Stat 2378)

§ 21.9655 Rates of supplemental educational assistance.

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.9675.

(a) *Individuals eligible for supplemental educational assistance under chapter 33.* (1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316)

(b) *Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3021; Pub. L. 110–252, 122 Stat. 2378)

§ 21.9660 Rural relocation benefit.

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of $500 if the individual—

(a) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(b) Either—

(1) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(2) Travels by air to physically attend an institution of higher learning for

pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(3) Has provided documentation required in § 21.9680(c).

(Authority: 38 U.S.C. 3318)

§ 21.9665 Reimbursement for licensing or certification tests.

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) $2,000.

(Authority: 38 U.S.C. 3315)

§ 21.9670 Work-study allowance.

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of § 21.4145.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

§ 21.9675 Conditions that result in reduced rates or no payment.

The payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction and has incurred no expenses for books, supplies, or equipment if—

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction if—

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following—

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in § 21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (See § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

§ 21.9680 Certifications and release of payments.

(a) *Payee.* (1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under § 21.9640, directly to the institution of higher learning as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.*

(1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing

allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9720.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073)

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either—

(*1*) Is preceded by an interval of nonpayment of 30 days or more; or

(*2*) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the $500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG–4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (b)(5)(i) through (b)(5)(v) of this section concerning intervals and in paragraph (5)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(5)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (b)(5)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(ii) *Restrictions on payment for intervals.* VA will make no payment for an interval if—

(A) The individual's rate of pursuit is one-half time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating a check or receiving a direct deposit for educational assistance, that no benefits be paid for the interval period;

(D) The individual's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(E) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis; or

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and pursuing a similar program of education at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar program of education at the second school, VA may not make payments for the interval.

(iv) *Payment for intervals that occur at the same school.* (A) If the individual remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(*1*) Semesters or quarters,

(*2*) A semester or quarter and a term that is at least as long as the interval,

(*3*) A semester or quarter and a summer term that is at least as long as the interval,

(*4*) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(*5*) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) *Payment for intervals that occur between overlapping enrollments.* (A) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

(*1*) By treating the ending date of each enrollment period as though it were the individual's last date of training before the interval,

(*2*) By treating the beginning date of each enrollment period as though it were the individual's first date of training after the interval,

(*3*) By examining the interval payment that would be made to the individual on the basis of the various combinations of beginning and ending dates, and

(*4*) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(B) VA will not reduce the interval rate of payment as a result of training the individual may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(5)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(5)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(*1*) The Director of the VA Regional Processing Office of jurisdiction if:

(*i*) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(*ii*) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(*2*) The Director of Education Service if:

(*i*) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(*ii*) The reason for the closing is a strike, and the strike lasts, or is anticipated to last, more than 30 days.

(B) A school that disagrees with a decision made under paragraph (b)(5)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(*1*) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments; or

(*2*) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

(c) *Rural relocation benefit.* VA will make the $500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9680;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

(*1*) DD Form 214, Certification of Release or Discharge from Active Duty; or

(*2*) The most recent Federal income tax return; or

(*3*) The most recent State income tax return; or

(*4*) Rental/lease agreement; or

(*5*) Mortgage document; or

(*6*) Current real property assessment; or

(*7*) Voter registration card.

(B) An individual using entitlement granted under § 21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in

paragraph (c)(2)(ii) of this section, may submit any document in paragraphs (c)(2)(ii)(A)(*2*) through (*7*) of this section bearing the name and current address of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation.* An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

§ 21.9685 Tutorial Assistance.

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual—

(1) Is enrolled in and pursuing a postsecondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that—

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed $1,200.

(Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0171)

§ 21.9690 Nonduplication of educational assistance.

(a) Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(1) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(2) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(3) 10 U.S.C. 106a (Section 901, Educational Assistance Test Program);

(4) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or

(8) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96–342)

(b) An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

§ 21.9695 Overpayments.

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§ 21.4008 and 21.4009 to eligible individuals and, when appropriate, to institutions of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.* (1) An overpayment of educational assistance paid to an eligible individual constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§ 1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.9635(r).

(2) An overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. If the individual never attended the term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual for such term, quarter, or semester.

(3) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent—

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(iii) In determining whether an overpayment resulting from the actions listed in paragraphs (b)(3)(i) and (ii) of this section should be recovered from an institution of higher learning, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(4) VA will determine the amount of an overpayment as follows—

(i) For an individual who does not complete one or more courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such course or courses, VA will establish an overpayment equal to the amount of educational assistance paid for the course or courses not completed during that certified period of enrollment.

(ii) For an individual who does not complete one or more courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such course or courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid for the course or courses not completed by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due for the course or courses not completed will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (''book stipend'').

(Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

§ 21.9700 Yellow Ribbon Program.

(a) *Establishment.* The ''Yellow Ribbon G.I. Education Enhancement Program'', known as the ''Yellow Ribbon Program,'' permits an institution of higher learning (IHL), at the IHL's option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in § 21.9640(a) or to their designated dependents using entitlement transferred under § 21.9570, who are pursuing training at an eligible IHL.

(c) *Eligible IHLs.* This program is only available at IHLs located in the United States or at a branch of such IHL that is located outside the United States.

(d) *Agreements.* VA will enter into an agreement with an eligible IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to—

(1) Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), during the academic year;

(2) Provide contributions during the current academic year and all subsequent academic years in which the IHL participates in the Yellow Ribbon Program and the student maintains satisfactory progress, conduct, and attendance according to the regularly prescribed standards of the institution;

(3) Limit contributions made on behalf of a participant to funds under the unrestricted control of the IHL (*e.g.*, a scholarship sent directly to an IHL on behalf of an individual or specific group of individuals from a third party may not be included in Yellow Ribbon Program contributions). Funds received directly or indirectly from Federal sources may not be counted toward contributions;

(4) State the maximum number of individuals for whom contributions will be made during the academic year;

(5) State the manner (whether by direct grant, scholarship, or otherwise) contributions will be made under the Yellow Ribbon Program;

(6) State the maximum dollar amount of contributions that may be provided on behalf of any particular individual during the academic year regardless of the rate at which the individual is pursuing training. IHLs may specify different contributions amounts—

(i) Based on student status (*i.e.* , undergraduate, graduate, doctoral), or

(ii) For each subelement of the institution (*i.e.*, college or professional school). The maximum amount specified for each subelement of the IHL will apply to all programs and disciplines offered under such subelement.

(7) Provide the maximum amount of contributions payable toward the unmet established charges to all participating individuals during each term, quarter, or semester the individual is enrolled if the IHL's total contribution toward the individual's unmet established charges for the term, quarter, or semester, do not exceed the maximum dollar amount payable during the academic year as specified in paragraph (d)(6) of this section.

(e) *Centralized Agreements.* IHLs with multiple campuses may enter into a single Yellow Ribbon Program Agreement if all participating branches and extensions—

(1) Are listed in the agreement;

(2) Are subject to the authority of the authorizing official signing the Yellow Ribbon Program Agreement; and

(3) Have a certifying official or other employee who meets the requirements of § 21.4266(f)(3)(ii) and who has access to the terms of the Yellow Ribbon Program Agreement.

(f) *Matching Contributions.* VA will match each dollar provided by the school on behalf of an individual; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(g) *Outreach.* The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA's GI Bill Web site at *http://www.gibill.va.gov.* The list will include specific information on each school's agreement with VA.

(Authority: 38 U.S.C. 3317)

Pursuit of Courses

§ 21.9710 Pursuit.

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3323(c))

§ 21.9715 Advance payment certification.

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is

entitled to the monthly housing allowance as provided in § 21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made.* In order for an individual to receive an advance payment of the monthly housing allowance, an application or other document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

§ 21.9720 Certification of enrollment.

Except as stated in § 21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in § 21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Institutions of higher learning that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(Approved by the Office of Management and Budget under control number 2900–0073)

§ 21.9725 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher learning he or she is attending.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.* (1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

§ 21.9735 Other required reports.

VA will apply the provisions of § 21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a))

§ 21.9740 False, late, or missing reports.

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or

misleading claims for benefits payable under 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.* (1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See § 21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's programs of education for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9745 Reporting fee.

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of § 21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

Course Assessment

§ 21.9750 Course measurement.

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment in accordance with this section. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(a) *Measurement of courses reported in credit hours.* If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(b) *Measurement of courses reported in clock hours.* If the courses are measured in clock hours, VA will—

(1) Convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1)(i) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(1)(ii) of this section rounded to the nearest hundredth by—

(A) If the institution of higher learning measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the institution by the number of clock hours considered full-time at the institution.

(B) If the institution of higher learning only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the institution.

(2) Divide the result of paragraph (b)(1) rounded to the nearest hundredth by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(c) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit in accordance with this paragraph. For individuals pursuing high school courses measured in—

(1) Credit hours, VA will use the formula in paragraph (a) of this section.

(2) Clock hours, VA will use the formula in paragraph (b) of this section.

(3) Units, VA will convert the units to credit hours as follows—

(i) Divide the total number of units required for the program of education by 4 (the number of ordinary school years generally required for completion);

(ii) Round the result of paragraph (d)(3)(i) of this section to the nearest whole number.

(iii) Multiply the result of paragraph (d)(3)(ii) of this section by:

(A) 1.0 to determine the number of units required for a rate of pursuit equal to 100 percent. This number is equivalent to 14 credit hours;

(B) .75 to determine the number of units required for a rate of pursuit equal to 75 percent. An individual will be considered to be enrolled in 10.5 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(A) of this section;

(C) .50 to determine the number of units required for a rate of pursuit equal to 50 percent. An individual will be considered to be enrolled in 7 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(B) of this section;

(D) .25 to determine the number of units required for a rate of pursuit equal to 25 percent. An individual will be considered to be enrolled in 3.5 credit hours for any number of units up to the number determined in paragraph (d)(3)(iii)(C) of this section.

(Authority: 38 U.S.C. 3319(h))

Approval of Programs of Education

§ 21.9765 Program of education approval.

VA may provide educational assistance for pursuit of a program of education offered by an institution of higher learning if that program of education is approved under 38 U.S.C. chapter 30 in accordance with §§ 21.7220 and 21.7222.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

Administrative

§ 21.9770 Administrative.

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term ''veteran'' as used in these sections is deemed to mean ''an eligible individual under 38 U.S.C. chapter 33,'' and the term ''38 U.S.C chapter 30'' as used in these sections is deemed to mean ''38 U.S.C. chapter 33''.

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights.

(Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

[FR Doc. E9–7052 Filed 3–30–09; 8:45 am]

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Federal Register

Tuesday,
March 31, 2009

Part IV

Office of Management and Budget

Department of Commerce

Bureau of the Census

Office of Information and Regulation and Regulatory Affairs; Procedures for Participating in the Appeals Process for the 2010 Decennial Census Local Update of Census Addresses (LUCA) Program; Notice

OFFICE OF MANAGEMENT AND BUDGET

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No.: 090302265–9268–01]

Office of Information and Regulatory Affairs; Procedures for Participating in the Appeals Process for the 2010 Decennial Census Local Update of Census Addresses (LUCA) Program

AGENCIES: Office of Information and Regulatory Affairs, Office of Management and Budget; and Bureau of the Census, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: As part of implementing the Census Address List Improvement Act of 1994, the Office of Management and Budget (OMB) and the Bureau of the Census (Census Bureau) request public comment on the Appeals Process whereby Tribal, State, and local governments participating in the 2010 Decennial Census Local Update of Census Addresses (LUCA) Program may appeal determinations made by the Census Bureau with respect to their suggested changes to the 2010 Census Address List. For information purposes, this notice also describes the LUCA Feedback materials that the Census Bureau will provide to participating governments and how those governments can use the materials as the basis for an appeal.

Electronic Availability: This notice is available on the Internet from the OMB Web site at *http://www.whitehouse.gov/omb/fedreg_default/*.

DATES: To ensure consideration during the decision-making process, OMB must receive all comments in writing on or before April 30, 2009.

ADDRESSES: Comments concerning the proposed appeals procedure may be submitted though one of the following methods:

- *Fax:* Comments may be faxed to Katherine K. Wallman, Chief Statistician, Office of Management and Budget, fax number (202) 395–7245.
- *E-mail:* Comments may be sent to *2010AppealsProcess@omb.eop.gov*, with the subject 2010 Appeals Process.
- *Federal eRulemaking Portal: http://www.Regulations.gov*. Simply type ''LUCA Program'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Correspondence about the 2010 Census LUCA Program in general should be sent to Arnold A. Jackson, Associate Director for Decennial Census, U.S. Census Bureau, Washington, DC 20233, telephone (301) 763–8626, fax number (301) 763–8867, e-mail *Arnold.A.Jackson@census.gov*.

Because of delays in the receipt of regular mail due to security screening, you are encouraged to use electronic communications to transmit your comments in order to ensure timely receipt. All comments with the subject of ''2010 Appeals Process'' received by the date specified above will be included as part of the official record, and made available to the public on *http://www.Regulations.gov* and on OMB's Web site. For this reason, please do not include in your comments any information of a confidential nature, such as sensitive personal information or proprietary information.

FOR FURTHER INFORMATION CONTACT: For information about the proposed Appeals Process, contact Suzann Evinger, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone (202) 395–7315; fax number (202) 395–7245. For information about the Census Bureau's 2010 Census LUCA Program, contact Timothy F. Trainor, Chief, Geography Division, U.S. Census Bureau, Washington, DC 20233–7400, telephone (301) 763–2131; fax (301) 763–4710.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB), in consultation with the Bureau of the Census (Census Bureau), publishes this notice to seek comments on the proposed procedures for the 2010 Decennial Census Local Update of Census Addresses (LUCA) Appeals Process. The Appeals Process allows Tribal, State, and local governments participating in the 2010 Decennial Census Local Update of Census Addresses (LUCA) Program to appeal determinations made by the Census Bureau with respect to their suggested changes to the 2010 Census Address List.

The Census Address List Improvement Act of 1994

The Census Address List Improvement Act of 1994 (Pub. L. 103–430, 108 Stat 4393 (1994)) mandates the establishment of a program to be used by the Census Bureau for developing the decennial census address list and address lists for other censuses and surveys conducted by the Bureau. The Act's provisions direct the Secretary of Commerce to: (1) Publish standards defining the content and structure of address information that Tribal, State, and local governments may submit to be used for developing a national address list; (2) develop and publish a timetable for the Census Bureau to receive, review, and respond to submissions; and (3) provide a response to the submissions regarding the Census Bureau's determination for each address. The Act provides further that OMB's Administrator of the Office of Information and Regulatory Affairs, acting through the Chief Statistician and in consultation with the Census Bureau, shall develop a process for Tribal, State, and local governments to appeal determinations of the Census Bureau. The Act also directs the U.S. Postal Service to provide the Secretary of Commerce with address information, as appropriate, for use by the Census Bureau.

The Act authorizes the Census Bureau to provide designated officials of Tribal, State, and local governments with access to census addresses information. Prior to the 2000 Census, the Census Bureau was limited to providing block summary totals of addresses to Tribal and local governments. The 2000 Census marked the first decennial census where Tribal and local governments were able to review the census address list.

The OMB Office of Information and Regulatory Affairs Administrator's Proposed 2010 LUCA Appeals Process

To ensure that Tribal, State, and local governments participating in the2010 Decennial Census LUCA Program have a means to appeal the Census Bureau's determinations, the Census Address List Improvement Act of 1994 requires that the Administrator of OMB's Office of Information and Regulatory Affairs, acting through the Chief Statistician and in consultation with the Census Bureau, develop an appeals process to resolve any disagreements that may remain after participating governments receive the Census Bureau's LUCA Feedback materials. This section describes the proposed procedures for that Appeals Process on which comments are now being sought. For reference purposes only, the section below entitled ''The Census Bureau's 2010 Decennial Census LUCA Program'' describes the already-completed phase of the program. Also for reference purposes only, the Appeals Process that was used for the 2000 Census is described in the **Federal Register** notice published on June 30, 1999 (64 FR 35548).

A. Overview of the Appeals Process

Governmental jurisdictions that participated in LUCA Option 1 or LUCA Option 2 and completed a review of 2010 Census LUCA materials may file

an Appeal if they meet the eligibility criteria. Jurisdictions that participated in LUCA Option 3 are not eligible to appeal. Appeals must be filed within 30 calendar days from the date the participant receives its LUCA Feedback materials. Appeals filed after the deadline will be denied as untimely. When filing an appeal, eligible participants must include supporting documentation that substantiates the existence and location of each appealed address. Eligible participants may file an Appeal with the 2010 Decennial Census LUCA Appeals Staff, a temporary Federal entity set up to administer the Appeals Process, and must also submit a duplicate copy of the Appeal to the Census Bureau's Regional Census Center responsible for that governmental jurisdiction. After notification by the Appeals Staff that an eligible participant has appealed, the Census Bureau will have 15 calendar days to respond to the Appeal. Appeal decisions will be based solely on a review of written documentation provided to the Appeals Staff by the eligible government and the Census Bureau. The decision of the Appeals Staff will be final. The Appeals Staff is scheduled to conclude its review of appeal submissions by March 31, 2010. Specific eligibility criteria and detailed requirements for Appeal submissions are provided below.

B. Appeal Procedures for Option 1—Title 13 Full Address List Review LUCA Program Participants

1. Eligibility Criteria for Filing an Appeal

Option 1 participating governments are eligible to file an appeal if they (1) returned additions to or corrections of the 2010 Decennial Census Address List, or (2) challenged the count of addresses in one or more census blocks on the 2010 Decennial Census Address Count List after their LUCA review, or (3) certified to the Census Bureau after their LUCA review that the 2010 Decennial Census Address List was correct and required no update.

Eligible Option 1 participating governments may appeal (1) address additions and corrections they provided after their initial review of the 2010 Census Address List that the Census Bureau did not accept, (2) addresses they believe are still missing from blocks whose address count they challenged during their LUCA review of the Address Count List, and (3) addresses that were deleted from the 2010 Decennial Census Address List by the Census Bureau during the Address Canvassing Operation that were not commented on by participants during their initial LUCA review.

When filing an Appeal, eligible LUCA Program participants must provide (1) contact information for the governmental jurisdiction filing the Appeal, (2) address information for each address being appealed, and (3) supporting documentation that substantiates the existence and/or location of each address being appealed as specified below.

2. Contact Information

Eligible participants must provide the following contact information for the governmental jurisdiction filing the Appeal:

a. Name of the governmental jurisdiction, and

b. Name, mailing address, telephone number, fax number, and electronic mail address (if any) of that jurisdiction's contact person for the Appeal.

3. Address Information

a. Eligible participants must provide the following six items of information to appeal the Census Bureau's rejection of the submission of a new address to be added to, or a correction to an existing address on, the Census Address List (as evidenced by the Census Bureau's final determination code for that address on the Detailed Feedback Address List),

or

to appeal the Census Bureau's deletion of an address during the Address Canvassing Operation that was not previously commented on by the participant during its initial LUCA review (as indicated for that address on the Detailed Feedback Address List):

(1) Complete address (including the house number, unit designator if applicable, street name, street direction, street type, post office name, and ZIP Code) or if there is no address a location description of the housing unit or other living quarters.

(2) Control ID number.

(3) Census Tract number.

(4) Census Block number.

(5) Participant submitted action code.

(6) Census Bureau's Processing Code.

Eligible participants must provide information for each appealed address on a computer-readable form or on paper. Technical requirements for the format of address information will be included with the feedback materials the participant receives from the Census Bureau.

b. To appeal the omission of addresses the eligible participant believes are still missing from blocks whose address counts the participant challenged previously during its initial LUCA review (as evidenced by the revised address counts for those blocks on the Detailed Feedback Address Count Challenge List), provide the following items of information for each missing address:

(1) Complete address (including the house number, unit designator if applicable, street name, street direction, street type, post office name, and ZIP Code) or if there is no address a location description of the housing unit or other living quarters.

(2) Census Tract number from the map or shapefile.

(3) Census Block number from the map or shapefile.

4. Supporting Documentation

Eligible participants must provide supporting documentation for each appealed address as specified below in section E, ''Supporting Documentation an Eligible Government Must File with an Appeal.''

C. Appeal Procedures for Option 2—Title 13 Local Address List Submission LUCA Program Participants

1. Eligibility Criteria for Filing an Appeal

Option 2 participants are eligible to file an appeal if they: (1) Returned their local city-style address list, or (2) certified to the Census Bureau after their LUCA review that the 2010 Census Address List was correct and required no update. Option 2 participants may appeal: (1) The Census Bureau's rejection of the existence or location of an address they submitted for inclusion in the 2010 Census Address List (as evidenced for that address by the Census Bureau's processing code Detailed Feedback List) and (2) the Census Bureau's deletion of an address from the 2010 Census Address List during the Address Canvassing Operation (as indicated for that address on the Detailed Feedback Address List).

When filing an Appeal, jurisdictions must provide: (1) Contact information for the jurisdiction, (2) address information for each address being appealed, and (3) supporting documentation that substantiates the existence and/or location of each address being appealed as specified below.

2. Contact Information

Eligible participants must provide the following contact information for the governmental jurisdiction filing the Appeal:

a. Name of the eligible jurisdiction, and

b. Name, mailing address, telephone number, fax number, and electronic mail address (if any) of that jurisdiction's contact person for the Appeal.

3. Address Information

Eligible participants must provide the following information for each address that is being appealed. Address information may be submitted in computer-readable form or on paper. Technical requirements for the format of address information will be included with the feedback materials the participant receives from the Census Bureau.

a. Complete address (including the house number, unit designator if applicable, street name, street direction, street type, and ZIP Code) or a location description of the housing unit or other living quarters.

b. Control ID number.

c. Census Tract number from the map or shapefile.

d. Census Block number from the map or shapefile.

e. Census Bureau's Processing Code.

4. Supporting Documentation

Eligible participants must provide supporting documentation for each appealed address as specified below in section E, ''Supporting Documentation an Eligible Government Must File with an Appeal.''

D. Appeal Procedures for Option 3—Non-Title 13 Local Address List Submission LUCA Participants

Option 3 participants are not eligible to file an Appeal because these participants do not receive the detailed address level feedback materials required as the basis for an appeal.

E. Supporting Documentation That Must be Filed With an Appeal

The appeals decisions will be based solely on a review of written documentation provided by the eligible participating government and the Census Bureau. Eligible participating governments must submit the following supporting documentation with their Appeals:

1. A written explanation that gives the eligible participating government's specific recommendations for how each address and location being appealed should appear on the 2010 Decennial Census Address List.

2. A written statement that outlines the eligible participating government's position for why the Appeals Staff should adopt its recommendations. The statement must specifically respond to the explanation that accompanied the Census Bureau's LUCA Feedback materials.

3. For each address (or group of addresses), supporting documentary evidence, including a reference to the exact location on the supporting documentation where the Appeals Staff can find specific evidence, supporting the eligible government's position with respect to the existence or correctness of that address. Useful types of supporting evidence include:

a. Documentation of on-site inspection and/or interview of residents and/or neighbors.

b. Issuance of recent occupancy permit for unit. (Building permits are not acceptable, as they do not ensure that the units have been built and/or are occupied.)

c. Provision of utilities (electricity, gas, sewer, water, telephone, etc.) to the residence. The utility record should show that this is not a service to a commercial unit, or an additional service to an existing residence (such as a second telephone line).

d. Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit.

e. Photography, including aerial photography.

f. Land use maps.

g. Local 911 emergency lists, if they distinguish residential from commercial units.

h. Tax assessment records, if they distinguish residential from commercial units.

4. Evidence that demonstrates the quality of address or map reference sources provided as supporting evidence such as:

a. Date of the address source.

b. How often the address source is updated.

c. Methods used to update the source.

d. Quality assurance procedure(s) used in maintaining the address source.

e. How the address source is used by the eligible government and/or by the originator of the source.

All Appeal documentation must be filed with the Appeals Staff within 30 calendar days after the eligible participating government's receipt of its LUCA Feedback materials. At the same time it files its Appeal, the eligible government must send a duplicate copy of its Appeal, including all supporting documentation, to the Census Bureau's Regional Census Center responsible for that jurisdiction. The eligible jurisdiction may not submit any materials to the Appeals Staff after the 30-day period has elapsed.

F. Deadline To File Appeals

Appeals must be filed by the eligible participating government within 30 calendar days after that government's receipt of the LUCA Feedback materials. ''Receipt'' as used herein is defined as the delivery date reported to the Census Bureau by the delivery service that transmits the feedback materials to the eligible participating government. In order to safeguard the confidential address materials covered by Title 13, the transmitting of an Appeal to the 2010 Decennial Census LUCA Appeals Staff must adhere to the Census Bureau's specific guidelines for shipping materials. The guidelines will be supplied with the feedback materials. The guidelines specifically prohibit the use of e-mail or fax as secure modes of transmitting confidential materials. The eligible participating government should transmit its appeal materials to the Appeals Staff via regular or Express Mail or overnight delivery service, and must keep a record of the date it transmits these materials. The ''filing date'' for the Appeals shall be the date the Appeal is postmarked or the date it is shipped by the delivery service. All Appeals filed after the deadline will be denied as untimely.

G. Where To File an Appeal

Appeals must be sent to the 2010 Decennial Census LUCA Appeals Staff, the address for which will be supplied with the feedback materials. At the same time, a duplicate copy of all Appeal documentation must be sent to the Census Bureau's Regional Census Center responsible for the jurisdiction. Upon receipt of an Appeal, the LUCA Appeals Staff will send a confirmation to the eligible jurisdiction that its Appeal has been received. The Appeals Staff also will notify the Census Bureau that the Appeal has been filed.

H. Documentation and Supporting Evidence That May Be Submitted by the Census Bureau During the Appeals Process

The Census Bureau is not required to respond to the Appeal or to provide any materials in support of its determination. Upon receipt of notification that an Appeal has been filed, the Census Bureau will have 15 calendar days in which it may (if the Census Bureau so chooses):

1. Submit to the LUCA Appeals Staff written documentation briefly summarizing its position, as well as any supporting evidence concerning the appealed addresses,

or

2. Submit to the Appeals Staff a written statement agreeing to the recommendation(s) in the Appeal.

If the Census Bureau submits any written documentation to the Appeals

Staff to support its position, the Census Bureau at the same time must send a copy of its submission to the eligible participating government. The Census Bureau may not submit any materials to the Appeals Staff after the 15-day period has elapsed.

I. The Appeals Review and Final Decision Process

The Appeals Process will be administered by the 2010 Decennial Census LUCA Appeals Staff, a temporary Federal entity. The Appeals Staff will include Appeals Officers, who are trained in the procedures for processing an Appeal and in the examination and analysis of address list information, locations of addresses and housing units, and supporting materials.

For each Appeal, an Appeals Officer will review the Census Bureau's feedback materials and the written documentation and supporting evidence submitted by the eligible government and the Census Bureau. No testimony or oral argument will be received by the Appeals Officer. Appeals Officers will apply the following principles in conducting their review:

1. The Appeals Officer shall consider the quality of the map or address reference source as the basis for determining the validity of an address (or group of addresses) and its (their) location(s).

2. For any address for which the Appeals Officer determines that the quality of the supporting evidence submitted by both parties is of equal weight, the Appeals Officer shall decide in favor of the eligible government.

At the conclusion of the review of an appealed address (or group of addresses), the Appeals Officer will prepare a draft written determination. The draft written determination will be reviewed by a higher-level official on the Appeals Staff. The Director of the Appeals Staff (or his or her designee) will then issue a final written determination to both the eligible government and the Census Bureau. The final written determination will include a brief explanation of the Appeals Staff's decision, and will specify how the appealed address(es) or its (their) location(s) should appear on the 2010 Decennial Census Address List. Each final written determination shall become part of the administrative record of the Appeals Process.

The Appeals Staff's decision is final. The Census Bureau will include on the 2010 Decennial Census Address List used for subsequent census operations all addresses added to, or corrected in, the 2010 Census Address List as a result of the Appeals Process, and attempt to locate and enumerate them. Inclusion of an address on the list does not mean that a living quarters with that address exists or that the address will be included in the final 2010 data summaries. The census-taking process will determine the inclusion status of the address—whether or not it is actually a housing unit—and the final population and housing unit status for each address.

J. Completion of the Appeals Process

Appeals reviews will be completed and written determinations issued to the concerned parties as soon as possible. The Census Address List Improvement Act of 1994 (Pub. L. 103–430, 108 Stat 4393 (1994)) requires that all appeals be resolved before the decennial census date (April 1, 2010).

The Census Bureau's 2010 Decennial Census LUCA Program

The Census Bureau and OMB provide below a copy of the procedures for participation in the 2010 Decennial Census LUCA Program. Comments are not being accepted on the program provisions, which were offered for public comment previously. This information is being provided below for reference purposes only. Please see the notice published in the **Federal Register** on March 7, 2008 (73 FR 12369) for more information on the program.

For the 2010 LUCA Program, participating governmental jurisdictions chose one of three participation options for reviewing the census address list and/or submitting their own local residential address information to the Census Bureau. In addition, they could opt to receive materials in paper or computer-readable formats, or use Census Bureau-supplied software to update their jurisdiction's map features and address list. Jurisdictions with more than 6,000 addresses were required to participate using a computer-readable address list or the Census Bureau-supplied software. All LUCA participants were required to ''geocode'' (*i.e.*, identify for an individual address its correct geographic location including the correct state, county, census tract, and census block codes) each city-style address they added or submitted. The census tract and census block numbers are displayed on the Census Bureau-supplied maps, digital shapefiles, and software tool. Additionally, all LUCA participants could make updates and corrections to the features and boundaries on the Census Bureau-supplied maps or digital shapefiles. Described below are the three options that Tribal, State, and local governments could have used to participate in the 2010 Decennial Census LUCA Program.

Option 1—Title 13 Full Address List Review

The Option 1 Full Address List Review option required that the participant sign a Confidentiality Agreement in accordance with Title 13, United States Code (U.S.C.) to maintain the confidentiality of the census address information they received from the Census Bureau for review. The Full Address List Review participants received the 2010 Decennial Census LUCA Address List, the 2010 Decennial Census LUCA Address Count List (providing a count of addresses within each census block), and census maps or digital shapefiles of their jurisdiction. Participants who selected this option were required to have the means to secure the census address list containing Title 13 information.

Although the LUCA Address List contained both city-style (*e.g.*, house number, street name, post office name, ZIP Code) and noncity-style (*e.g.*, rural route/box number, post office box, general delivery, location description) addresses, participants could only add and/or provide updates to city-style addresses. In addition, Option 1 participants could challenge the address count for any census block on their LUCA Address Count List. If the entire governmental jurisdiction contained only noncity-style addresses, Option 1 was the only LUCA Program option the jurisdiction could choose. Participants with both city-style and noncity-style addresses could not provide updates for individual addresses on the LUCA Address List and challenge the count of addresses on the LUCA Address Count List within the same census block.

Option 2—Title 13 Local Address List Submission

The Option 2 Title 13 Local Address List Submission option required that the participants sign a Confidentiality Agreement in accordance with Title 13, U.S.C., to maintain the confidentiality of the census address information they received from the Census Bureau. This was a new LUCA option for the 2010 Census intended for those participants who did not have the time or resources to update the 2010 Decennial Census LUCA Address List, but wished to submit their local residential address list for Census Bureau use. Participants who selected this option were required to have the means to secure the census address list containing Title 13 information.

Although Option 2 participants received both the LUCA Address List

containing residential city-style and noncity-style addresses and the LUCA Address Count List, these materials could only be used for reference purposes. Option 2 LUCA participants were required to submit their local city-style address list in a Census Bureau-defined computer-readable format. The Census Bureau did not accept Option 2 LUCA participants' local address lists in paper format and did not accept local address lists containing noncity-style addresses.

Option 3—Non-Title 13 Local Address List Submission

The Option 3 Non-Title 13 Local Address List Submission option was also a new LUCA option for the 2010 Census. Under Option 3, participants could choose not to receive and review the 2010 Decennial Census LUCA Address List for their jurisdiction, and not to be required to sign a Confidentiality Agreement. Instead, the participants received the 2010 Decennial Census LUCA Address Count List in computer-readable format for reference purposes only. Option 3 LUCA participants were required to submit their local city-style address list in a Census Bureau-defined computer-readable format. The Census Bureau did not accept Option 3 LUCA participants' local address lists in paper format and did not accept local address lists containing noncity-style addresses.

The Census Bureau's 2010 Decennial Census Address Canvassing Operation

The Census Bureau will conduct a nationwide field check called the Address Canvassing Operation to verify the census address list, including the qualifying updates supplied by 2010 Census LUCA participants. The operation will begin in March of 2009. During this operation, Census Bureau field staff will add, delete, and correct entries on the Census Address List and make needed corrections to census maps. The Census Bureau's feedback to LUCA Program participants, conveying the Census Bureau's determinations on their submissions of additions and updates to census address information, will be based on the results of Address Canvassing.

The 2010 Decennial Census LUCA Feedback Materials

The Census Bureau will provide 2010 LUCA Feedback materials to qualifying governmental jurisdictions on a flow basis starting in October 2009, and ending in December 2009. The majority of LUCA Program participants will receive their feedback materials in the same media format that they requested for the initial 2010 Census LUCA review materials. Although the initial LUCA review materials stated that the Census Bureau would provide structure coordinates (map spots) for the feedback phase of the program, the Census Bureau will not provide them for housing units collected during the 2009 Address Canvassing Operation due to schedule changes that have delayed the timing of coordinate processing.

The Census Bureau will provide the LUCA Feedback materials after completing the following steps:

(1) For jurisdictions that submitted address updates to the 2010 Decennial Census LUCA Address List or submitted their local address list, the Census Bureau will review and apply each correctly submitted participant address update to its address list, adding any new addresses not already on its list.

(2) The Census Bureau will conduct the Address Canvassing Operation and in the course of doing so will verify the participant suggested address updates (additions, corrections, deletions, etc.). The Address Canvassing Operation will ensure that all address updates and additions exist and that they are in the correct census block.

Potential group quarters (GQs) addresses are identified as ''other living quarters'' (OLQs) for the feedback phase of the LUCA Program. Addresses identified in the Address Canvassing operation as potentially being GQs are later classified as group quarters, housing units, or nonresidential during a separate Census Bureau operation, the Group Quarters Validation (GQV), scheduled for October 2009.

Described below are the 2010 Census LUCA Feedback materials that LUCA Program participants will receive under each of the three participation options.

LUCA Feedback for Option 1—Title 13 Full Address List Review Participants

The Census Bureau will provide 2010 Census LUCA Feedback materials to Option 1 Tribal, State, or local governments that took any of the following actions:

(1) Submitted updates (*i.e.*, additions, corrections, deletions) to city-style addresses on the 2010 Census LUCA Address List.

(2) Challenged the housing unit address count and/or group quarters address count for one or more census blocks on the 2010 Census LUCA Address Count List.

(3) Updated the Census Bureau maps.

(4) Certified to the Census Bureau at the end of their LUCA review that the 2010 Census LUCA Address List was correct and needed no update.

The 2010 Census LUCA Feedback materials that the Census Bureau will provide to each Option 1 participating government will document which local address additions and updates the Census Bureau accepted or did not accept. The 2010 Census LUCA Feedback materials include:

(1) A Full Address List that contains all of the residential addresses currently recorded in the Census Address List within the participant's jurisdiction. This address list will reflect the results of the jurisdiction's participation in the 2010 Census LUCA Program, the Address Canvassing Operation, and updates from other sources.

(2) A Detailed Feedback Address List that shows each address record addition and update submitted by the participant and a processing code that identifies a specific action taken by the Census Bureau on that address record. The Detailed Feedback Address List will also identify addresses deleted in the Address Canvassing Operation.

(3) A Full Address Count List that shows the current residential address counts, including those for housing units and other living quarters, for each census block within the participant's jurisdiction.

(4) A Detailed Feedback Address Count Challenge List that shows address counts only for those census blocks challenged by the participant.

Note: On the Detailed Feedback Address List and the Detailed Feedback Address Count Challenge List, addresses will be reported only with 4-digit basic block numbers instead of any suffixed block numbers that may appear on the other feedback materials. These block numbers will not be suffixed.

(5) A Feedback Address Update Summary Report that displays the tallies of actions taken by the Census Bureau for all of the address updates submitted by the participant.

(6) Feedback maps may include feature updates provided by the participant and/or other updates found by the Census Bureau during the Address Canvassing Operation. Boundary updates from the 2009 Boundary and Annexation Survey submitted after March 1, 2009, may not be reflected.

Note: The 4-digit block number on the Full Address List, Full Address Count List, and Feedback maps will be identical to those appearing on the initial LUCA review materials. However, the suffixes associated with the 4-digit basic block numbers may have no correlation to the suffixes on the initial review materials.

LUCA Feedback for Option 2—Title 13 Local Address List Submission Participants

The Census Bureau will provide 2010 Census LUCA Feedback materials to Option 2 Tribal, State, or local governments that took any of the following actions:

(1) Submitted their local city-style address list.

(2) Updated the Census Bureau maps.

(3) Certified to the Census Bureau at the end of their LUCA review that the 2010 Census Address List was correct and a local address list submission was not needed.

The 2010 Census LUCA Feedback materials that the Census Bureau will provide to each Option 2 participating government will document which local address submissions the Census Bureau accepted or did not accept. The 2010 LUCA Feedback materials include:

(1) A Full Address List that contains all of the residential addresses for those housing units and other living quarters currently recorded in the Census Address File within the participant's jurisdiction. This address list will reflect the results of the jurisdiction's participation in the 2010 Census LUCA Program, the Address Canvassing Operation, and other sources.

(2) A Detailed Feedback Address List that shows each address record submitted by the participant and a processing code that identifies a specific action taken by the Census Bureau on that address record. The Detailed Feedback Address List will also identify addresses deleted in the Address Canvassing Operation.

Note: On the Detailed Feedback Address List, addresses will be reported only with 4-digit basic block numbers instead of any suffixed block numbers that may appear on the other feedback materials. These block numbers will not be suffixed.

(3) A Full Address Count List that shows the current residential address counts, including those for housing units and other living quarters, for each census block within the participant's jurisdiction.

(4) A Feedback Address Update Summary Report that displays the tallies of actions taken by the Census Bureau for all of the addresses submitted by the participant.

(5) Feedback Maps may include feature updates provided by the participant and/or other updates found by the Census Bureau during the Address Canvassing Operation. Boundary updates from the 2009 Boundary and Annexation Survey submitted after March 1, 2009, may not be reflected.

Note: The 4-digit block number on the Full Address List, Full Address Count List, and Feedback maps will be identical to those appearing on the initial LUCA review materials. However, the suffixes associated with the 4-digit basic block numbers may have no correlation to the suffixes on the initial review materials.

The 2010 LUCA Feedback for Option 2 participants does not include a Detailed Feedback Address Count Challenge List.

LUCA Feedback for Option 3—Non-Title 13 Local Address List Submission Participants

The Census Bureau will provide 2010 Census LUCA Feedback materials to Option 3 Tribal, State, or local governments that took any of the following actions:

(1) Submitted their local city-style address list.

(2) Updated the Census Bureau maps.

(3) Certified to the Census Bureau at the end of their LUCA review that the 2010 Census Address Count List was correct and a local address list submission was not needed.

The 2010 Census LUCA Feedback materials that the Census Bureau will provide to each Option 3 participating government include:

(1) Feedback Maps that may include feature updates provided by the participant and/or other updates found by the Census Bureau during the Address Canvassing Operation.

(2) A Feedback Address Summary Report.

Note: The 4-digit block number on the Feedback maps will be identical to those appearing on the initial LUCA review materials. However, the suffixes associated with the 4-digit basic block numbers may have no correlation to the suffixes on the initial review materials.

The LUCA Feedback for Option 3 participants does not include a Full Address List, Detailed Feedback Address List, a Detailed Feedback Address Count Challenge List, or a Full Address Count List.

Participants under all three options that submitted map updates only without certifying that their address lists were correct will only receive maps/shapefiles as feedback.

Executive Order 12866

This notice has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the Census Bureau requested, and OMB granted its clearance for, the information collection requirements for this program on September 5, 2008, (OMB Control Number 0607–0795, expires on March 31, 2009). The Census Bureau's request for a generic clearance covering this program until 2011 was sent to the OMB on February 3, 2009.

Kevin F. Neyland,

Acting Administrator, Office of Information and Regulatory Affairs.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–7176 Filed 3–30–09; 8:45 am]

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H.R. 1105/P.L. 111–8

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